1733.

SUPREME COURT OF THE UNITED STATES.

No. 165.

GEORGE S. GAINES AND AL., APPELLANTS,

vs.

ISAAC W. NICHOLSON AND AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

ISAAC W. NICHOLSON et al., complainants,
vs.
GEORGE S. GAINES et al., defendants.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term thereof, in the year of our Lord one thousand eight hundred and forty-five.

Be it remembered, that heretofore, to wit, on the eleventh day of November, in the year of our Lord *A. D.* eighteen hundred and forty-two, came the said complainants, who are all citizens of the State of Mississippi, by their counsel, and filed in the clerk's office of the court aforesaid their certain bill of complaint against the said defendants, all of whom are citizens of the State of Alabama, and procured process to be issued thereon; which said bill is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States, sitting in chancery at Jackson, for the southern district of Mississippi:

The bill of complaint of Isaac W. Nicholson, Powhatan B. Thermond, Lewis B. Barnes, John T. Moseley, S. M. Goode, and John Hilman, all of whom are citizens of the State of Mississippi, complainants, against George S. Gaines, Francis S. Lyon and his wife Sarah Lyon, James M. Davenport and his wife Alethan Davenport, Goodman G. Griffin and his wife Willey Ann Griffin, George Frederick Glover, Ann Gaines Glover, Louisa Davenport Glover, Mary Thompson, and Mary A. Glover, all of whom are citizens of the State of Alabama, defendants.

Humbly complaining, your orators would respectfully show unto your honors, that your orators, Isaac W. Nicholson, Powhatan B. Thermond, Lewis B. Barnes, John T. Moseley, and S. M. Goode, are the trustees of the schools and school lands reserved by the acts of Congress for the use of schools in township twelve, range eighteen east, situated in the county of Kemper, in the State of Mississippi. They would further show unto your honor, that section sixteen, in said township twelve, range eighteen east, was reserved, by the acts of Congress, for the use of schools in said township, and, being so reserved, your orators took possession of the same, and leased it to your orator, John Hilman, who went into possession of said tract of land prior to the 27th day of March, 1841, and has continued in possession ever since until this time.

Your orators would further show unto your honors, that on the 27th day of March, in the year 1841, an action of ejectment was instituted, on the law side of this honorable court, by John Doe, lessee of George S. Gaines and Francis S. Lyon, and of the heirs at law of Allen Glover, deceased, against your orator, John Hilman, for the recovery of said

section sixteen, and to dispossess and eject your orators therefrom, which suit is still pending undetermined in said court.

Your orators would further show unto your honors, that by virtue of the second article of the supplement of Dancing Rabbit creek treaty, entered into on the 27th day of September, 1830, between the United States and the Choctaw tribe of Indians, certain portions of land, situated within the territory ceded by the said Indians to the United States, were reserved to divers members of said tribe of Indians, and, amongst others, a section of land was reserved to David W. Wall, in the following words, to wit: "Also, one section is allowed to the following persons, to wit: Middleton Mackey, Wesley Train, Choclohoma, Moses Foster, D. W. Wall, &c., to be located in entire sections, to include their present residence and improvement, with the exception of Moseley Wall and Susan Colbert, who are authorized to locate theirs in any unimproved unoccupied land."

Your orators would further show unto your honors, that on the 27th day of August, in the year 1832, the said David W. Wall, by deed of that date, bargained, sold, and conveyed, to George S Gaines and Allen Glover, all the right, title, interest, and claim of him, the said David W. Wall, in and to a certain reservation of one section or six hundred and fifty acres of land, made and granted to him, the said David W. Wall, under and by virtue of the provisions of a treaty made and concluded between the United States of America and the Choctaw tribe of Indians, at a place called Dancing Rabbit creek, in said nation, in the month of September, 1830.

Your orators would further show unto your honors, that the said George S. Gaines and Allen Glover, deceased, falsely and fraudulently pretending and representing to the President of the United States that the said David W. Wall, at the date of said treaty, resided upon said section sixteen, in the township and range aforesaid, and had his improvement thereupon, and that they had located the reservation of said Wall upon the same on the seventh day of December, in the year 1838, procured a patent to be issued to them, conveying to them the said section sixteen, in township twelve, range eighteen east.

Your orators would further show unto your honor, that at the date of said treaty the said David W. Wall did not reside, nor had he any improvement upon said section sixteen, as aforesaid, but resided at a long distance from the same, and had no right or title, claim or interest whatever, in said section of land, which had been reserved, as your orators distinctly and positively aver, for the use of schools in the State of Mississippi, by the laws of the United States.

Your orators would further show to your honor, that the said Gaines and Glover were so well aware that they had no right to the said section of land, by virtue of their purchase from the said Wall, that they located the claim of said Wall at one time, as your orators have been informed and believe, upon another section of land near Mayhew, in Oaktibbeha county, but finding that their claim to said last named section would be disputed, they, in the technical language of land-mongers

and speculators, lifted the same, and laid it upon said section sixteen. Your orators would further show unto your honor, that, by virtue of the patent thus falsely and fraudulently obtained, they have been advised that the said Gaines and Allen Glover, deceased, obtained the highest and best legal title to said section sixteen, when, in equity and justice, they have no title thereto, but the same belongs to your orators as trustees and tenant of the schools and school lands, as aforesaid.

Your orators would further show unto your honor, that they have been informed and believe that the said Allen Glover has departed this life, and that he has left, as his heirs at law and devisees, his widow, Mary A. Glover, and his children, Williamson A. Glover, Sarah Lyon, wife of Francis S. Lyon, Alethean Davenport, wife of James M. Davenport, Willey Ann Griffin, George Frederick Glover, Ann Gaines Glover, Laura Davenport Glover, and his grand-daughter, Mary Thompson.

Your orators would further show unto your honor, that the said defendants, relying upon the legal title thus fraudulently obtained by them, and, trusting to the unfair and iniquitous advantage thereby obtained, the said defendants commenced the action of ejectment aforesaid, and are prosecuting the same against your orators, and without the interposition of your honor they will succeed, as your orators [are] advised, in dispossessing your orators, contrary to equity and good conscience.

Your orators would further show unto your honor, that the said Wall for a long time previous to the said treaty, had not at the date of said treaty, did not, and since the same has not, resided upon said section of land, or had any improvement thereupon; nor do your orators believe that the said Wall ever resided upon or had any improvement upon it.

In tender consideration, &c., and as your orators are remediless at law, and can only have relief in this honorable court, where matters of this kind are properly cognizable, they pray your honor that the said Francis S. Lyon, Sarah Lyon, George S. Gaines, Williamson A. Glover, Mary A. Glover, James M. Davenport, Alethean Davenport, Goodman G. Griffin, Willey Ann Griffin, George Frederick Glover, Ann Gaines Glover, Laura Davenport Glover, and Mary Thompson, be made defendants to this bill, that subpœna issue, &c., and that they be compelled to appear and answer all and singular the allegations in this bill contained as fully as if they were again repeated, and they particularly interrogated thereto; and particularly that they answer and say if your orators are not, and were not at the commencement of said suit at law, in possession of said section 16, township twelve, range eighteen east; if they have not commenced an action at law in the circuit court of the United States to dispossess and eject your orators; if the reservation to D. W. Wall of a section of land was not by virtue of the second article of the supplement of the treaty of Dancing Rabbit creek; if the reserve was not made to him in the words set out in this bill; if said Wall did not sell to Gaines and Glover his right and title under said treaty; if he conveyed to them by the deed to them said section sixteen; if they did not locate his right upon a tract of land

near Mayhew, and afterwards lift it and place it upon section sixteen; if Wall before, at the date of, or since the said treaty of Dancing Rabbit creek, resided upon, or had any improvement on said section sixteen; if so, when did he reside upon, or have his improvement upon it; where said Wall resided and had his improvement at the date of the treaty; if said Glover and Gaines did not procure a patent to issue to them as assignees for said section of land; if they did not procure said patent to issue by representing that said Wall resided and had his improvement on said section at the date of the treaty, and that said Wall was entitled to said land by virtue of said treaty; what affidavit, representations, and statements they made to procure the issuance of said patent; if the defendants are not now prosecuting an action of ejectment by virtue of the legal title obtained by means of said patent; if the said Allen Glover has not departed this life, and left as his heirs at law and devisees the parties herein named as such heirs at law.

Your orators pray that, at the final hearing of this cause, your honors will decree that said defendants be compelled to execute and deliver to them a deed, conveying to them and their successors in office, as trustees as aforesaid, the legal title to said section sixteen, township twelve, range eighteen east, or in the event that the said defendants refuse to convey the said land by deed as aforesaid, your orators pray that the clerk and master of this court be directed to execute and deliver to them a deed for the said land as aforesaid.

They pray that it be further decreed that the said Gaines and Glover are not entitled to said land, but that the same belongs to the trustees of said township and their successors in office; they further pray that the said defendants, their heirs and assigns, be perpetually enjoined from ejecting or dispossessing your orators and their successors from said section by means of the action of ejectment pending as aforesaid; and also from commencing any other action of any kind whatever to eject or turn your orators or their successors in office from the possession of said section of land; and, in the mean time, your orators pray that an injunction may issue enjoining and restraining the said defendants from taking out any writ of possession, or taking any other or further steps to eject or dispossess your orators as aforesaid, until the further order of this court; or if mistaken in the relief prayed for, they pray for such other and further and additional relief as in equity they are entitled to receive; and, as in duty bound, they will ever pray, &c.

RUCKS & YERGERS, *Solicitors.*

Circuit court of the United States, November term, 1842.

This day, James McCalebb, agent for complainants in the foregoing bill, personally appeared in open court, and made oath that the statements in said bill contained are true to the best of his knowledge, information, and belief. JAMES McCALEBB.

November 11th, 1842. W. H. BROWN, *Clerk.*

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the 11th day of November, A. D. 1842, the following order was made, to wit:

It is ordered, that an injunction be granted according to the prayer of said bill, enjoining the judgment at law therein mentioned, upon complainants in said bill entering into bond in the penalty of five hundred dollars, with James McCalebb as their security, conditioned to pay to defendants all costs and damages that they may sustain by reason of the issuance of this injunction.

And on the said eleventh of November, came the said parties, and filed their bond in these words and figures, to wit:

UNITED STATES OF AMERICA, *Southern district of Mississippi:*

Konw all men by these presents, that we, Isaac W. Nicholson, Powhatan B. Thurmond, Louis B. Barnes, John T. Moseley, S. M. Goode, and James McCalebb, are held and firmly bound unto George S. Gaines, Francis S. Lyon, and the heirs at law of Allen Glover, deceased, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said George S. Gaines, Francis S. Lyon, and the heirs at law of Allen Glover, deceased, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the eleventh day of November, A. D. 1842.

The condition of this obligation is such: That whereas the above bound Isaac W. Nicholson, Powhatan B. Thurmond, Louis B. Barnes, John T. Moseley, and S. M. Goode, have obtained from the honorable the circuit court of the United States, for the southern district of Mississippi, an injunction to stay all further proceedings at law in a certain suit in said court, being an action of ejectment brought therein by John Dow, lessee of said Gaines and Lyon, and the heirs at law of said Allen Glover, deceased, against John Helman and John T. Moseley, as tenants in possession of the 16th section, township twelve, range eighteen east; and also to enjoin and restrain the issuance of a writ of possession in said suit; as also the taking of any other or further steps to eject or dispossess the tenants in possession of said section of land.

Now, if the said Isaac W. Nicholson, Powhatan B. Thurmond, Louis B. Barnes, John T. Moseley, and S. M. Goode, in case the said injunction shall be dissolved, shall well and truly pay all damages and costs that may be sustained by the plaintiffs in said action of ejectment, by reason of the issuance of said injunction; and also all such costs and damages as shall be awarded against them, then this obligation to be void, otherwise to be and remain in full force and virtue.

J. W. NICHOLSON, [SEAL.]
POWHATAN B. THURMOND, [SEAL.]
LOUIS B. BARNES, [SEAL.]
JOHN T. MOSELEY, [SEAL.]
S. M. GOODE. [SEAL.]

By their attorney in fact, JAMES McCALEBB.
JAMES McCALEBB. [SEAL.]

Sealed and delivered in presence of—

(Endorsed.)—Filed and approved by the court, Nov. 11, 1842.

And afterwards, to wit, on the 17th day of March, A. D. 1843, the following writ of injunction and subpœna issued out of the clerk's office of said court, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to George S. Gaines et al., (defendants in chancery,) your counsellors, attorneys, and agents, greeting:

Whereas, it hath been represented to us in our circuit court for the ninth circuit and southern district of Mississippi, in chancery sitting, on the part of Isaac W. Nicholson et al., complainants, that they have lately exhibited their bill of complaint against you, the said George S. Gaines et al., (named in complainants' bill,) defendants, to be relieved touching the matters in said bill contained, we, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said George S. Gaines et al., your counsellors, agents, and attorneys as aforesaid, and all others, under the penalty of five hundred dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from proceeding to sue out a writ of possession in a certain judgment in ejectment rendered in our said court at its November term, in favor of Geo. S. Gaines et al., against one John Hillman, and from any further proceedings against the said complainants touching the matters in said bill contained, until our said court shall make another order to the contrary, according to the prayer of said bill of complaint.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in November, A. D. one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States.

[L. S.]

Issued the 17th day of March, A. D. 1843.

W. H. BROWN, *Clerk.*
By GEO. W. MILLER, *D. C.*

Subpœna.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to George S. Gaines, Francis S. Lyon and wife, James M. Davenport, Goodman G. Griffin and wife, George Frederick Glover, Ann Gaines Glover, Laura Davenport Glover, Mary A. Thompson, and Mary A. Glover, greeting:

For certain causes offered before us in our circuit court for the southern district of Mississippi, sitting in chancery, we command you that, laying all other matters aside, and notwithstanding any excuse, you personally appear at a circuit court in and for said district, sitting in chancery, to be held at the town of Jackson on the first Monday of

May, 1843, to answer to a bill of complaint exhibited against you by Isaac W. Nicholson, Powhatan B. Thurmond, Lewis B. Barnes, John T. Moseley, S. M. Goode, and John Hilman, complainants in our said court, and that they answer the allegations in said bill contained on or before the said first Monday of May, 1843, or the same will be taken against them for confessed; and further to do and receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in November, A. D. one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States.

Issued the 17th day of March, A. D. 1843.

W. H. BROWN, *Clerk*.
By GEO. W. MILLER, *D. C.*

Marshal's return.

Executed 22d March, 1843.

A. MILLER, *Marshal*.
By C. S. MILLER, *D. M.*

And afterwards, to wit, on the 27th day of October, A. D. 1843, came George S. Gaines and Francis S. Lyon, by their counsel, and filed in the clerk's office of said court their joint answer to the bill of complaint herein, in the words and figures following, to wit:

Circuit court of the United States for the southern district of Mississippi, holden at Jackson.

ISAAC W. NICHOLSON, Powhatan B. Thurmond, Lewis B. Barnes, John T. Moseley, Sidney M. Goode, and John Hilman,
vs.
GEORGE S. GAINES, Francis S. Lyon and Sarah Lyon, his wife, James M. Davenport and Alethean, his wife, Goodman G. Griffin and Willey Ann, his wife, George F. Glover, Ann G. Glover, Laura D. Glover, Mary Thornton, and Mary A. Glover. } *In chancery.*

The joint answer of George S. Gaines and Francis S. Lyon, two of the defendants above named, to the bill of complaint of the above named complainants.

These respondents, now and at all times hereafter, saving and reserving to themselves all manner of exception to the manifold uncertainties, untruths, and imperfections in the complainants' bill contained, for answer thereunto, or so much thereof as they are advised it is material for them to make answer to, say, that they know nothing of the authority of the complainants to sue in this behalf as trustees of the schools and school lands reserved by the acts of Congress for the use

of schools in township twelve, range eighteen east, situate in the county of Kemper, in the State of Mississippi. If the complainants have been invested with any such authority, these respondents pray that they may be held to strict legal proof of the same. These respondents further answering say, that they have no knowledge that section sixteen, in said township twelve, range eighteen east, has ever been by any act done or performed by the Government of the United States, or by any act of the Congress of the United States, actually and in fact reserved for the use of schools in said township while the said section belonged to the Government of the United States, and the title thereto was in such condition as to enable the Government to make such reservation. If any such reservation has at any time been in fact made, these respondents pray that the complainants may be held to strict legal proof of the same.

These respondents further answering say, that they are aware that the Congress of the United States, in providing for the sale of the public lands in Mississippi, have by law directed the sixteenth section in each township to be reserved for the support of schools therein, and have made provision by law for reserving for the same purpose other and contiguous sections in lieu, in cases where the sixteenth section may have been disposed of, or otherwise appropriated.

These respondents charge that the sixteenth section in question is embraced within the tract or district of territory ceded to the United States by the Choctaw tribe of Indians by the treaty of Dancing Rabbit creek of September, 1830, which said treaty was ratified by the President and Senate of the United States on the twenty-fourth day of February, 1831; that at the date of this cession there were no white inhabitants living within the limits of township twelve, range eighteen east, in Kemper county, Mississippi, nor were there at the date aforesaid either schools or school trustees, or commissioners, in the township aforesaid. These respondents are advised and insist, that at the date of the treaty aforesaid, the United States were incapable of making any grant of any portion of the land ceded by said treaty, except such grant were subject to the Indian of occupancy; and in and by said treaty the parties thereto stipulated and agreed, that certain members of the Choctaw tribe of Indians should be entitled to reservations of land. The supplement to this treaty granted to D. W. Wall, and to several other persons, all specially named, one section of land each, to be located in entire sections, to include their present residence and improvement, with the exception of Molly Wail and Susan Colbert, who are authorized to locate theirs on any unimproved unoccupied land. David W. Wall, one of the grantees in the clause of the treaty referred to, for the consideration of two thousand dollars paid to him in money in the presence of William Ward, United States agent for the Choctaws, sold and conveyed in due form to Allen Glover, since deceased, and to this respondent, George S. Gaines, the section of land granted to him as aforesaid; and this sale has in due form been approved by the President of the United States.

These respondents further answering say, that they are informed

and verily believe, and so charge, that David W. Wall, the grantee aforesaid, at the date of said treaty, had in fact no residence and improvement of his own, but was at the date of said treaty a minor, and residing with or under the control of his father, who was the head of a Choctaw family, and residing at the date of said treaty in the district of country ceded to the United States thereby, and within the district of the Choctaw chief, which embraced the tract now forming the sixteenth section in question. These respondents further answering say, that upon proof made to the proper department of the United States Government, that D. W. Wall, the grantee, had in fact no residence and improvement, but was a minor, living with his father or under his control; it was held that a grant of a reservation of a section of land had been made by the treaty to the said D. W. Wall; and that the direction as to the manner in which the reservation was to be located, ought not to be so construed as to defeat the grant, especially as the eighteenth article of the treaty expressly provides that the construction, whenever well founded doubt shall arise, shall be most favorable to the Choctaws. Under these facts and circumstances the Government of the United States, in the execution of the treaty, permitted the grant to D. W. Wall to be located upon the section of land in question, and the President of the United States having approved the sale by the grantee to Allen Glover and George S. Gaines, issued to them a patent or grant, in fee simple, for said section of land; which said patent or grant, in fee simple, is herewith submitted and prayed to be taken as part of this answer. These respondents have understood, and therefore admit, that the complainants, or a portion of them, have taken possession of the section of land in question; and that prior to the 27th day of March, 1841, the complainant, John Hilman, was in possession of said section of land, but his possession was obtained since the location of the grant to D. W. Wall, and since the conveyance to the said Allen Glover and George S. Gaines as aforesaid, and as these respondents are advised and believe, unlawful, unjust, and inequitable, and has thus far been maintained by mere force, and in the face of a grant in fee simple emanating from the Government of the United States, with the assent of the Choctaws.

These respondents also admit that they caused an action at law to be instituted in the circuit court of the United States, holden at Jackson, for the southern district of Mississippi, as alleged in the complainants' bill, against the said John Hilman, for the recovery of said section sixteen, and to dispossess and eject the said Hilman therefrom. They also admit that, on the 27th day of August, 1832, David W. Wall, by deed of that date, conveyed to Allen Glover and George S. Gaines all his right, title, interest, and claim in and to the section of land granted to him by the treaty of Dancing Rabbit creek, of September, 1830; a copy of which deed of conveyance is hereto annexed, marked exhibit B, and prayed to be taken as a part of this answer.

These respondents further answering say, that, since the date of said deed, and since the issuance of the patent before referred to, and before

the commencement of this suit at law against the said Hilman, Allen Glover, one of the grantees in said deed and patent named, departed this life in Marengo county, in the State of Alabama, leaving a last will and testament, in and by which he devised to this respondent, the said Francis S. Lyon, his half or share in the section of land in question; which last will was duly proven and admitted to record in the office of the clerk of the county court of Marengo county aforesaid, and which will be produced and proved upon the final hearing of this cause.

These respondents further answering say, that the said George S. Gaines and Allen Glover, deceased, never did, jointly, nor did either of them severally or separately, falsely pretend and represent to the President of the United States that the said David W. Wall, at the date of the treaty, resided upon section sixteen, in the township and range aforesaid, and had his improvement thereupon; no such pretence was ever set up or representation made to the President of the United States, or any one else, by the said George S. Gaines, or Allen Glover, in his lifetime, or either of them. A reference to the record of the Executive Department of the Government, or even to the published documents relating to the public lands, would have relieved the complainants from an allegation so utterly false and unfounded.

These respondents admit that David W. Wall never resided upon the section sixteen in question, nor had he any improvement upon said section, but the same was set apart and appropriated, by the sanction and order of the Government of the United States, in fulfilment of the treaty, and in satisfaction of the grant to Wall, under the facts and circumstances already stated, and without any false or fraudulent pretence or representations whatever, by or on the part of the grantees, in the patent aforesaid. These respondents deny that the said Gaines and Glover were ever aware that they had no right to the section of land granted to D. W. Wall by the treaty, and sold and conveyed to them as aforesaid; but, on the contrary thereof, from the time of their purchase of said section, and the payment of a full and fair price therefor, they considered themselves fairly and justly entitled thereto. These respondents have understood, from the said Allen Glover, in his lifetime, and therefore admit, that he applied to George W. Martin, then locating agent for the lands reserved and granted by the treaty, for leave to locate the section granted to D. W. Wall, near Mayhew, in Mississippi, and within the same land district in which the section sixteen is situated; but that the said Martin, for reasons best known to himself, and altogether unknown to these respondents, refused or rejected said proposed location; this attempt to locate said grant was not abandoned by the said Allen Glover, or lifted by him, to use the language familiar to the complainants, from any belief that the claim to a section of land would or could be legally resisted by any one, but the location was not accomplished, merely for the reason that an officer claiming authority to control in such matters, thought proper not to acquiesce in it. These respondents have already stated that Allen Glover has departed this life; he died about the (3d) third day of December, (1840,) eighteen hundred and forty, and left as

his heirs at law and devisees his widow, Mary A. Glover, and his children, Williamson A. Glover, Sarah Lyon, wife of Francis S. Lyon, Alethean Davenport, widow of James M. Davenport, now deceased, Willey Ann Griffin, wife of Goodman G. Griffin, George F. Glover, Ann Gaines Glover, and Laura D. Glover, the three last named being minors under the age of fourteen years; and also his grand daughter Mary Thornton, who is also a minor under the age of fourteen. These respondents admit that the complainant, Hilman, was in possession of said section sixteen at the time of the commencement of their suit at law, as before stated; that they have commenced an action at law for the recovery of said section of land in the circuit court of the United States, at Jackson, Mississippi, and to dispossess and eject the said Hilman; that the reservation to D. W. Wall, of a section of land, was by virtue of the supplement to the treaty of Dancing Rabbit creek; that the reserve was made to him in the words shewn by said treaty; that the said Wall did sell to Glover and Gaines his right and title arising under the treaty to the land in question, as shewn by the deed, a copy of which is annexed, and also by the patent referred to; they did not locate Wall's right on a section of land near Mayhew, and afterwards left it; but such a location was proposed by Allen Glover, and rejected by the agent of the Government, and the same claim was afterwards located upon the section sixteen in question. They admit that Wall never resided upon the section sixteen, nor had any improvement thereon. Wall, as before stated, had in fact no separate residence of his own at the date of the treaty, but is said to have been a minor, and to have lived with his father, who was the herd of a Choctaw family. These respondents admit that Glover and Gaines applied for and obtained a patent for the land in question to themselves, as assignees, but did not procure the patent to issue by representing that Wall resided and had his improvement on said section at the date of the treaty, but claimed that he was entitled to, or had a right to, locate said section by virtue of the grant to him under said treaty. These respondents made no affidavit or representation to procure the issuance of said patent. They proved by disinterested witnesses, at the time the grant was located, that Wall was a minor at the date of the treaty, and had no separate residence or improvement of his own, but lived with his father, or was under his control. They are now prosecuting an action of ejectment for the recovery of the said section of land, as before stated.

These respondents, having now answered all the material allegations in the complainants' bill, pray to be hence dismissed, with their reasonable costs in this behalf most unjustly expended.

GEORGE S. GAINES,
F. S. LYON.

THE STATE OF ALABAMA:

Before the undersigned, John Bragg, judge of the sixth judicial circuit in and for the State of Alabama, this day personally came and appeared George S. Gaines, one of the respondents in the foregoing an-

swer mentioned, who, being duly sworn according to law, deposes and says, that the facts stated and set forth in said answer as of his own knowledge are true, and those stated upon the information of others he believes to be true.

Sworn to and subscribed before me, this the 29th day of September, 1843.

J. BRAGG, *Judge sixth J. C. A.*

THE STATE OF ALABAMA:

Before the undersigned, Samuel Chapman, judge of the seventh judicial circuit in and for the State of Alabama, this day personally came and appeared Francis S. Lyon, one of the respondents in the foregoing answer mentioned, who, being duly sworn according to law, deposes and says, that the facts stated and set forth in said answer, as of his own knowledge, are true, and those stated upon the information of others he believes to be true.

F. S. LYON.

Sworn to and subscribed before me, this tenth day of October, 1843.

SAM'L CHAPMAN.

Exhibit B.

This indenture, made this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and thirty-two, between David W. Wall, of the first part, and Allen Glover and George S. Gaines, of the second part, witnesseth: that the said David W. Wall, for and in consideration of the sum of two thousand dollars, to him in hand paid by the said Allen Glover and George S. Gaines, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained, sold, and confirmed, and by these presents doth bargain, sell, and confirm, unto the said Allen Glover and George S. Gaines, and to their heirs and assigns, forever, the right, title, interest, and claim, of him, the said David W. Wall, in and to a certain reservation of one section, or six hundred and forty acres of land, made and granted to him, the said David W. Wall, under, and by virtue of, the provisions of a treaty made and concluded between the United States of America and the Choctaw tribe of Indians, at a place called Dancing Rabbit creek, in said nation, in the month of September, 1830; which said treaty was entered into by John Coffee and John H. Eaton, commissioners on the part of the United States, and the headmen and warriors of said nation; together with all and singular the hereditaments, appurtenances, and privileges thereunto belonging, or in any wise appertaining, and also all the estate, right, title, interest, claim, or demand whatsoever of him, the said David W. Wall, to the section of land granted to him by said treaty, and all his interest therein, either in law or equity; to have and to hold to the said Allen Glover and George S. Gaines, their heirs, and assigns, to the sole and only proper use, benefit, and behoof of the said Allen Glover and George S. Gaines, their heirs, and assigns, forever. And I, the said David W. Wall, for

myself and my heirs, do warrant and defend the title of said land to the said Allen Glover and George S. Gaines, and to their heirs and assigns.

In witness whereof I have hereunto set my hand and seal, the day and year above written.

DAVID W. WALL. [SEAL.]

Signed, sealed, and delivered, in presence of—
F. S. LYON,
SAMPSON MUNCRIEF.

I do hereby certify, to all whom it may or doth concern, that David W. Wall acknowledged the foregoing deed or instrument of writing to be his act and deed, and that he did receive two thousand dollars in my presence.

Given under my hand and seal, the 27th day of August, 1832.

W. WARD, *U. S. agent.*

STATE OF MISSISSIPPI, *Lowndes county:*

Personally appeared before me, Henry Dickinson, justice of the peace in and for said county, William Ward, late U. S. agent, who, being duly sworn, deposeth and saith, that David Wall did acknowledge the foregoing instrument to be his act and deed, and that he signed, sealed, and delivered the same, and that he believes that the witnesses, whose names are annexed to the deed, subscribed their names in his presence, and that he saw David Wall receive the sum of two thousand dollars from Allen Glover.

W. WARD.

Given under my hand and seal, this the 28th day of Nov., 1833.

HENRY DICKINSON, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, *Lowndes county:*

I, William L. Moore, clerk of probate in and for Lowndes county, do hereby certify, that the foregoing deed or instrument of writing was this day delivered to me for record, and the same has been duly recorded, with the certificate of acknowledgments and the certificate, in the records of my office, in book No. three, pages 265, 266, 267, 268, and 269.

Given under my hand and seal of office, at office, this the 28th day [L. S.] of November, 1833.

WILLIAM L. MOORE,
Clerk of probate.

THE STATE OF MISSISSIPPI, *Kemper county:*

I, Abel Key, clerk of the probate court of said county, do hereby certify, that the foregoing deed and authentications have been duly admitted to record, in record book (B) of deeds, pages 74 and 75.

Given under my hand and seal of office, at office in De Kalb, this [L. S.] 7th day of November, A. D. 1836.

Attest: ABEL KEY, *Clerk of probate.*
By LEWIS STOVALL, *Dep. clerk.*

And afterwards, to wit, on the 20th day of May, A. D. 1845, the following order was made by the court now here, to wit:

Upon the motion of the complainants, by their solicitor, it is ordered, that William H. Brown be, and he is hereby, appointed guardian ad litem to the infant defendants herein.

Agreement of counsel, filed November 11th, 1845.

In this cause it is agreed, that the answer of George S. Gaines and Francis S. Lyon shall be deemed and taken as the answer of the other adult defendants, and have the same effect as if filed by them in person. It is also agreed, that all the testimony on file shall be read upon the hearing, subject only to objections as to competency.

GEO. S. YERGER,
Attorney for defendants.
W. YERGER,
Solicitor for complainants.

And afterwards, to wit, on the said 11th day of November, A. D. 1845, came the said William H. Brown, guardian ad litem, as aforesaid, and filed his answer, in the words and figures following, to wit:

The answer of William H. Brown, guardian ad litem of George F. Glover, Laura D. Glover, Anna Gaines Glover, and Mary Thornton, minors, under the age of twenty-one years, and heirs of Allen Glover, deceased, to the bill of complaint of Isaac W. Nicholson and others, school trustees, filed against them and others.

This respondent, saving and reserving, &c., for answer to said bill, or to so much thereof as he is advised it is material or necessary to answer, answering states, that he knows nothing of the matter and things charged in said bill; and, so far as the interest of the minor heirs above named are concerned, he requires strict proof thereof. He refers to the answer of George S. Gaines and Francis S. Glover, filed in this cause, and he begs leave to adopt the same, and prays that it may be considered as part of this answer.

W. H. BROWN,
Guardian ad litem of minor heirs.
GEO. S. YERGER,
Sol. for defendants.

I agree to receive the above answer without oath.

W. YERGER, *Sol. for compl'ts.*

And afterwards, to wit, on the 11th day of November aforesaid, A. D. 1845, came the said complainants, by their solicitor, and filed their replication to the several answers in this cause, in these words and figures, to wit:

ISAAC W. NICHOLSON et al.,
vs.
GEORGE S. GAINES et al.
} No. 99. Chancery.

And the complainants, for replication to the several answers filed in this behalf, say, that the matters and things contained in the said an-

swers are not true, and that the matters and things contained in their bill are true; and this they are ready to verify.

W. YERGER, *Sol. for compl'ts.*

And afterwards, to wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and forty-five, a decree was rendered by the court aforesaid, in the following words and figures, to wit:

Circuit court of the United States, southern district of Mississippi, November term, 1845. In chancery.

Between ISAAC W. NICHOLSON et al., compl'ts, and GEORGE S. GAINES et al., defendants. } Decree.

Be it remembered, that this cause came on to be heard at the present term, before the honorable Samuel J. Gholson, judge, &c., presiding, upon the bill, answers, exhibits, agreements, and proof in the cause; and upon argument on both sides; and now, at this day, the court being sufficiently advised, and because it appears to the satisfaction of the court that the complainants are entitled to the relief prayed for by them, it is therefore ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the judgment at law in the pleadings mentioned, and all attempts to enforce the same, be, and the same is hereby, perpetually enjoined; and also that the said defendants be, and they are hereby, perpetually enjoined from ejecting and turning out, or from commencing any other or further suit to eject and turn the said complainants, or their successors in office, out of the possession of the section of land in the pleadings mentioned, to wit, section sixteen, in township twelve, range eighteen east, in Kemper county. It is further ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the defendants shall, within sixty days from the date of this decree, by deed, in fee simple, without warranty, convey, quit claim, and relinquish, to the complainants and their successors in office, as trustees of schools and school lands, all the right, title, claim, and interest, which they, the said defendants, or any of them, have in and to said section of land; and in default of such conveyance being made by said defendants in the time aforesaid, then the clerk of this court be, and he is hereby, appointed a commissioner to carry into effect that portion of this decree directing said conveyance. It is further ordered, adjudged, and decreed, that the defendants shall pay all the costs of this suit. This ordered, adjudged, and decreed, this 18th of November, 1845. S. J. GHOLSON.

From which decree the defendants pray an appeal to the Supreme Court of the United States, which is granted.

Proofs.

This indenture, made the twenty-seventh day of August, in the year of our Lord one thousand eight hundred and thirty-two, between David W. Wall, of the first part, and Allen Glover and George S. Gaines, of

the second part, witnesseth, that the said David W. Wall, for and in consideration of the sum of two thousand dollars, to him in hand paid by the said Allen Glover and George S. Gaines, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained, sold, and confirmed, and by these presents doth bargain, sell, and confirm, unto the said Allen Glover and George S. Gaines, and to their heirs and assigns forever, all the right, title, interest, and claim of him, the said David W. Wall, in and to a certain reservation of one section, or six hundred and forty acres of land, made and granted to him, the said David W. Wall, under and by virtue of the provisions of a treaty made and concluded between the United States of America and the Choctaw tribe of Indians, at a place called Dancing Rabbit creek, in said nation, in the month of September, 1830; which said treaty was entered into by John Coffee and John H. Eaton, commissioners on the part of the United States, and the head men and warriors of said nation, together with all and singular the hereditaments, appurtenances, and privileges thereto belonging, or in any wise appertaining; and also all the estate, right, title, interest, claim, or demand whatsoever, of him, the said David W. Wall, to the section of land granted to him by said treaty, and all his interest therein, either in law or equity: To have and to hold to the said Allen Glover and George S. Gaines, their heirs and assigns, to the sole and only proper use and benefit and behoof of the said Allen Glover and George S. Gaines, their heirs and assigns, forever. And I, the said David W. Wall, for myself and my heirs, do warrant and defend the title of said land to the said Allen Glover and George S. Gaines, and to their heirs and assigns.

In witness whereof I have hereunto set my hand and seal the day and year above written. DAVID W. WALL. [SEAL.]

Signed, sealed, and delivered in presence of—
F. S. LYON,
SAMPSON MUNCRIEF.

I do certify, to all whom it may or doth concern, that David W. Wall did acknowledge the foregoing deed or instrument of writing to be his act and deed, and that he did receive two thousand dollars in my presence.

Given under my hand and seal this 27th day of August, 1832.
W. WARD, *U. S. Agent.*

STATE OF MISSISSIPPI, *Lowndes county:*

Personally appeared before me, Henry Dickenson, justice of the peace in and for said county, William Ward, late U. S. agent, who, being duly sworn, deposeth and saith, that David Wall did acknowledge the foregoing instrument to be his act and deed; that he signed, sealed, and delivered the same; and that he believes that the witnesses whose names are annexed to the deed subscribed their names in his presence; and that he saw David Wall receive the sum of two thousand dollars from Allen Glover. W. WARD.

Given under my hand and seal this 28th day of November, 1833.
HENRY DICKENSON, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, *Lowndes county:*

I, William L. Moore, clerk of probate in and for Lowndes county, do hereby certify, that the foregoing deed or instrument of writing was this day delivered to me for record, and the same has been duly recorded, with the certificates of acknowledgments and the certificates in the records of my office, in book No. 3, pages No. 265, 266, 267, 268, and 269.

Given under my hand and seal of office, at office, this 28th day of November, 1833.

[L. S.]

WILLIAM L. MOORE,
Clerk of probate.

THE STATE OF MISSISSIPPI, *Kemper county:*

I, Abel Key, clerk of the probate court of said county, do hereby certify, that the foregoing deed and authentications have been duly admitted to record in record book (B) of deeds, pages 74 and 75.

Given under my hand and seal of office, at office, in De Kalb, this the 7th day of November, A. D. 1836.

[L. S.]

Attest: ABEL KEY,
Clerk of probate.
By LEWIS STOVALL,
Deputy clerk.

GENERAL LAND OFFICE.

I, James Whitcomb, Commissioner of the General Land Office, do hereby certify, that the foregoing, on pages 1, 2, 3, and 4, is a true copy of the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the said office to be affixed, at the city of Washington, the twenty-eighth day of June, 1841.

[L. S.]

JAS. WHITCOMB, *Commissioner.*

In chancery, for the southern district of Mississippi, circuit court, 9th judicial circuit.

ISAAC W. NICHOLSON et al.
vs.
GEORGE S. GAINES et al.
} In chancery.

Interrogatories to be propounded to Thomas Lewis and MRS. Delilah Wall, witnesses in behalf of the complainant—the answer to which will be read in evidence on the trial of said cause:

Question 1st. Are you acquainted with the parties to the above suit?

Question 2d. Have you ever known David W. Wall mentioned in the treaty of Dancing Rabbit creek as D. W. Wall? If so, how long, and when did you know him?

Question 3d. How old was said D. W. Wall at the date of said treaty, to wit, in the month of September, 1830?

Question 4th. Where did said D. W. Wall live at the date of said treaty, to wit, in September, 1830?

Question 5th. Was said D. W. Wall, at the date of said treaty, married or single?

Question 6th. Was said D. W. Wall, at the date of said treaty, living with his father or keeping house by himself, having a family of his own?

Question 7th. Was said D. W. Wall a minor, under the age of twenty-one, at the date of said treaty, and residing with his father, or was he over the age of twenty-one years, the head of a family, and residing by himself, with his own family?

Question 8th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same, fully and at large, in your answer.

RUCKS & YERGER,
Solicitors for complainant.

Service acknowledged, 1st December, 1843.
GEO. S. YERGER, *for Def'ts.*

Cross interrogatory.

State whether said David W. Hall was in possession of any land improved by himself, or in possession or claiming any improved land. If so, state where it was situated, when he took possession, and who claims it now, and state how you derived your information.

GEO. S. YERGER, *for Defendants.*

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court United States.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing is a true copy of the interrogatories-in-chief, and the cross interrogatories filed in the case above stated as the same now remains on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Jackson, this 10th day of January, A. D. 1844.
[L. S.]

W. H. BROWN, *Clerk.*
By CHAS. H. KOZENS, *D. C.*

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to Allen Avery and John Kerr, or either of them, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Thomas Lewis and Mrs. Delilah Wall, wit-

nesses in behalf of the complainant in a certain cause now depending in the circuit court of the United States for the district aforesaid, wherein Isaac W. Nicholson et al. are complainants, and George S. Gaines et al. are defendants, you are requested at such certain days and places as you shall appoint, to call and cause the said witnesses to come before you, and them diligently examine on oath, and their examination into the circuit court aforesaid you distinctly and plainly set, together with this writ, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-three, and in the 68th year of the independence of the United States of America.

[L. S.]

W. H. BROWN, *Clerk*.

Issued the 17th day of January, 1844.

THE STATE of , *County* :

I, Allen Avery, one of the commissioners named in the annexed and foregoing commission, in pursuance of the same, in the case of Isaac W. Nicholson et al., trustees, &c., complainants, and George S. Gaines et al., defendants, have this day called and caused to come before me in Lauderdale county, Mississippi, Delila Wall, a witness for the complainants, and having duly sworn her the truth, and the whole truth to depose, on her oath testifies as follows, viz:

Answer to interrogatory 1. I am acquainted with George S. Gaines.

Ans. to int. 2. I have known him and did become acquainted with him near Daleville, in Lauderdale county, Mississippi, twelve months previous to the treaty at Dancing Rabbit creek. I was present at the treaty.

Ans. to int. 3. I have forgotten.

Ans. to int. 4. He, David W. Wall, lived near Daleville, in Lauderdale county, Mississippi, with old Mr. Dugany.

Ans. to int. 5. He was a single man at the time.

Ans. to int. 6. He was living with Mr. Dugany, and had no family.

Ans. to int. 7. I do not recollect whether he told that he was under or over twenty-one years old; he was not living with his father, neither had he a family at that time.

Ans. to int. 8. I know of nothing more that may be of advantage to either of the parties.

Answer to cross interrogatory.

He, David W. Wall, claimed a place near Mayhew, in Oaktibbeha county, Mississippi, and told me that he had sold it to Mr. George S. Gaines and Glover; he showed me the place in strawberry time the next year after the treaty; there was no improvement on the place that he showed me that I saw, except some of it was open prairie.

her
DELILA X WALL.
mark.

And the above examination having been carefully explained to by reading to her and understood by her, the deponent, and subscribed by her in my presence, it is hereby certified under my seal, this the 9th day of March, A. D. 1844, at the place and time named in the caption hereof.

Given under my hand and seal.

ALLEN AVERY. [SEAL.]
Commissioner.

Circuit court of the United States, southern district of Mississippi.

ISAAC W. NICHOLSON et al.
vs.
GEORGE S. GAINES et al.
} In chancery.

Questions to be asked Francis Scott, Archibald Adams, Benjamin Coleman, John Rupert, and Joshua Anderson, witnesses for complainants, the answers to which will be read in evidence on the trial of the above cause.

Question 1st. Are you acquainted with the parties to this suit?

Question 2d. Do you know how long section 16, in township twelve, and range eighteen east, in the county of Kemper, has been in possession of the trustees of school lands for that township, or their agents and tenants? If so, state it.

Question 3d. In what year did the trustees of schools and school lands, in township 12, range 18 east, in Kemper county, or their agents or tenants, first obtain possession of the 16th section of said township and range, and how long did they keep possession of the same?

Question 4th. Who was in possession of said section on or before the 7th day of December, 1838, and how long previous thereto had the same person been in possession?

Question 5th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

RUCKS & YERGER,
Solicitors for Complainants.

Service acknowledged, 1st December, 1843.

GEORGE S. YERGER,
For Defendants.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court United States.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing is a true copy of the interrogatories-in-chief filed in the above stated case, as the same now remain on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Jackson, this 17th day of January, A. D. [L. S.] 1842.

W. H. BROWN, *Clerk.*
Per CHAS. H. ROGERS, *D. C.*

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to wit, to Allen Avery and John Kerr, or either of them, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Francis Scott, Archibald Adams, Benjamin Coleman, John Rupert, and Joshua Anderson, witnesses for complainants, in a certain cause now pending in the circuit court of the United States for the district aforesaid, wherein Isaac W. Nicholson et al. are complainants, and George S. Gaines et al. are defendants, you are requested, at such days and places as you shall appoint, to call and cause the said witnesses to come before you, and them diligently examine on oath, and their examination in the circuit court aforesaid, you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-three, and in the 68th year of the independence of the United States of America.

Issued the 17th day of January, 1844.

W. H. BROWN, *Clerk.*

THE STATE OF MISSISSIPPI, *Kemper county:*

I, John Kerr, one of the commissioners named in the annexed and foregoing commission, in pursuance of the same in this case, I. W. Nicholson et al., trustees, &c., complainants, and G. S. Gaines et al., defendants, have this day called and caused to come before me, at the court-house in the town of De Kalb, in said county, Francis T. Scott, a witness for the complainants, and having duly sworn him the truth, and whole truth, to depose, he on his oath testified as follows:

To the first interrogatory. I am acquainted with the complainant, Isaac W. Nicholson, and the defendant, George S. Gaines.

To the 2d interrogatory. I do not know.

To the 3d interrogatory. I know that, in the year 1833, Jeremiah Sanders made an improvement on the land. I also made some improvement on the land, and during the said year of 1833, the lands were surveyed, and both said improvements were found to be on the 16th section, in township 12 N., of range 18 E., in the county of Kemper; during the next year, in 1834, the trustees of said 16th section were organized, and I abandoned my improvement to them. Jeremiah Sanders made an agreement with the said trustees to cultivate the improve-

ment made by him thereon during the year 1834, in consideration of his having improved the same; and, in the year 1835, the said trustees rented the said 16th section to Benjamin Coleman, who cultivated it that year. From the spring of 1833, until December, 1835, I lived in sight of said 16th section, and December, 1835, I moved out of the township, and do not know who has held possession since.

To the 4th interrogatory. All I know in relation to that matter is stated in my answer to the 3d interrogatory.

To the 5th interrogatory. I know nothing positive of my own knowledge.

FRAS. T. SCOTT.

And the above examination having been carefully read to and understood by the defendant, and subscribed by him, it is hereby certified, under my seal, this the 9th day of March, A. D. 1844, at the place named in the caption hereof.

JOHN KERR, *Commissioner*. [SEAL.]

STATE OF MISSISSIPPI, *Kemper county:*

I, John Kerr, one of the commissioners named in the annexed and foregoing commission, in pursuance of the same in this case, I. W. Nicholson et al., trustees, &c., complainants, and George S. Gaines et al., the defendants, have this day called and caused to come before me, in the town of Wahalake, Kemper county, Archibald Adams, a witness for the complainant, and having duly sworn him the truth, and whole truth, to depose, he on his oath testifies as follows, viz:

1st interrogatory. I am acquainted with Isaac W. Nicholson and the defendant, George S. Gaines.

2d interrogatory. I know that the trustees have had it in possession from January up to the present date.

3d interrogatory. I do not know.

4th interrogatory. I, Archibald Adams, was in possession of it at the time, and also the year previous, as agent of the trustees.

5th interrogatory. In the year 1839, George S. Gaines came to me and demanded possession, and showed his patent. I refused to give him possession, in consequence of my being put in possession by the trustees, and continued to hold possession for the trustees until the year of 1840; then John Hilman was put in possession as I left.

ARCHIBALD ADAMS.

And the above examination having been carefully read to and understood by the deponent, and subscribed by him, it is hereby certified, under my seal, this 9th day of March, A. D. 1844, at the place named in the caption hereof.

JOHN KERR, *Commissioner*. [SEAL.]

STATE OF ALABAMA, *Pickens county:*

I, John Kerr, one of the commissioners named in the annexed and foregoing commission, in pursuance of the same in this case, I. W. Nicholson et al., trustees, &c., complainants, and G. S. Gaines et al.,

defendants, have this day called and caused to come before me, in the town of Memphis, Pickens county, Benjamin Coleman, a witness for the complainant, and having duly sworn him the truth, and the whole truth, to depose, he on his oath testifies as follows, viz:

1st question. Answer. I am.

2d question. Answer. I know that the trustees of section 16, township 12, range 18 east, were in possession of said section in 1834, and ever since.

3d question. Answer. 1834.

4th question. Answer. Archibald Adams was in possession of said section December 7th, 1838, and the year previous.

5th question. Answer. I know nothing positive.

BENJAMIN COLEMAN.

The above examination having been carefully read to, and understood by, the deponent, and subscribed by him, is hereby certified under my seal, this 5th day of April, 1844, at the place named in the caption hereof.

JOHN KERR, [L. S.]
Commissioner.

THE STATE OF MISSISSIPPI, *Kemper county:*

I, John Kerr, one of the commissioners named in the annexed and foregoing commission, in pursuance of the same, in the case I. W. Nicholson et al., trustees, &c., *and* complainants, and George S. Gaines et al., defendants, have this day called and caused to come before me, in the town of Wahalak, in the aforesaid county, John Rupert, a witness for the complainant, and having duly sworn him the truth, and whole truth to depose, he, on his oath, testified as follows:

To the first interrogatory. I am acquainted with the complainant, I. W. Nicholson, and the defendant, George S. Gaines.

To 2d int. I do not know.

To the 3d int. I know that, in the year 1834, I lived in the aforesaid county, and in the neighborhood of section 16, in township 12 north, of range 18 east, when the first trustees were elected, and Jeremiah Sanders having made some improvement on the 16, the trustees let him cultivate it one year (viz., 1834) as their tenant; the next year it was rented, and has been ever since, by the trustees of said township.

To the 4th int. All that I know in relation to that matter is answered in the third interrogatory.

To the 5th int. I know nothing.

JOHN RUPERT.

And the above examination having been carefully read to, and understood by, the defendant, and subscribed by him, it is hereby certified under my seal, this the tenth day of April, A. D. 1844, at the place named in the caption hereof.

JOHN KERR, [L. S.]
Commissioner.

STATE OF MISSISSIPPI, *Kemper county:*

I, John Kerr, one of the commissioners named in the annexed and foregoing commission, in pursuance of the same, in this case, I. W. Nicholson et al., trustees, &c., complainants, and G. S. Gaines et al., the defendants, have this day called and caused to come before me, in the town of Wahalak, Kemper county, Joshua Anderson, a witness for the complainants, and having duly sworn him the truth, and whole truth to depose, he, on his oath, testifies as follows, viz:

1 interrogatory. I am acquainted with the complainant, Isaac W. Nicholson, and the defendant, George S. Gaines.

2 interrogatory. I do know, in the year 1834, that the trustees were organized and took possession of the 16th sect., township 12, range 18 east, and has had it in possession to the present time.

3 interrogatory. I know, in the year 1834, they took possession of said section, and continue to hold it in possession to this time.

4 interrogatory. I know that Archibald Adams was in possession of said section in the year 1838, and the year previous, as agent for the trustees.

5 interrogatory. I know that Jeremiah Sanders first settled on the 16th section, township 12, range 18 east, previous to survey of the lands, and when he found that his location was on said 16th section he gave it up to the trustees of schools and school lands.

JOSHUA ANDERSON.

And the above examination having been carefully read to, and understood by, the defendant, and subscribed by him, it is hereby certified under my seal, this the 9th day of March, A. D. 1844, at the place named in the caption hereof.

JOHN KERR, [L. S.]
Commissioner.

Copy of agreement filed.

It is agreed in this case, that complainants were trustees of schools and school lands, &c., as alleged by them in their bill, and that this agreement is to [be] used as evidence in the trial of the case.

Nov. 16th, 1845. GEO. S. YERGER, *for defts.*
W. YERGER, *for compl'ts.*

United States of America, southern district of Mississippi, circuit court United States.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing thirty-nine pages contain a true and complete transcript of the record of the suit in chancery therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of said court, at Jackson, this 21st day of February, A. D. 1846.

W. H. BROWN, *Clerk.*

ISAAC W. NICHOLSON et al.
vs.
GEORGE S. GAINES et al.

Circuit court United States for the southern district of Mississippi.

An appeal was prayed and granted in the above cause, and the record sent on to Washington city to file. It was ascertained before it was filed that the clerk had made a mistake in the transcript of the record, which was accordingly sent back to be corrected.

It is agreed between the counsel that the record may now be filed, or be filed at any time before the next term of the Supreme Court of the United States; and it is hereby agreed that it may be considered as filed regularly, and no advantage shall be taken of said transcript's not having been filed in time.

Jackson, June 25, 1847.

W. YERGER,
Solicitor for appellees.
GEO. S. YERGER,
Solicitor for appellant.

Filed December 2, 1847.

1746.

SUPREME COURT OF THE UNITED STATES.

No.

HORACE PEASE AND ABIJAH FISK, OWNERS OF THE STEAM-BOAT SULTANA, PLAINTIFFS IN ERROR,

vs.

THE MUNICIPALITY NO. ONE OF THE CITY OF NEW ORLEANS

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1747

STATE OF LOUISIANA,
Parish court, in and for the parish and city of New Orleans:

Record of appeal from the city court. Filed April 22d, 1845, in the parish court.

STATE OF LOUISIANA, *city court of New Orleans:*

MUNICIPALITY No. ONE
vs.
Steamer SULTANA, Capt. Pease and Owners. } No. 5732.

Appeal from Judge G. Preval. Filed March 4th, 1845.

THE STATE OF LOUISIANA, *city court of New Orleans:*

Present, the hon'ble G. Preval, judge.

Plaintiff claims from defendants the sum of eighty-two dollars, as per bill filed. $82 00.

MUNICIPALITY No. ONE
vs.
Steamboat SULTANA, Capt. Pease and Owners.

1845, January 13th. Citation and provisional seizure, on the affidavit of Mr. A. Rieffel, agent for plaintiff, issued, and returned citation, served on board, to the first clerk, a person above 14 years of age, and writ executed.

1845, January 16th. The defendants, by their attorney, filed this day a written answer.

1845, January 27th. On this day this cause came on to be tried, C. Morel, esq'r, for plaintiffs, and J. R. Grymes, esq'r, for defendants, when it was agreed that the case be submitted to me upon a statement of facts by both parties, which statement of facts was immediately drawn by Mr. Grymes, and signed by him and by Mr. Morel, with the condition that it will be submitted to Mr. Soule, one of the attorneys of the plaintiffs, and who was then absent from the court, in order to enable him to produce to the judge the authorities which he will think proper to offer on behalf of the claim of the Municipality No. One.

In the statement of facts it is admitted that the steamboat Sultana is of the burden of five hundred and twenty-seven $\frac{31}{95}$ tons, and that the said steamboat is employed in the transportation of produce, goods, and passengers, from Vicksburg, in the State of Mississippi, and all intermediate ports of New Orleans, to New Orleans, and from New Orleans to Vicksburg aforesaid.

That the said steamboat did arrive in the port of New Orleans, on or about the day of January, 1845, from Vicksburg aforesaid, with goods, merchandise, and produce, laden on board at Vicksburg, where she entered and discharged her cargo.

That the said steamboat, in regular course of her employment, makes one voyage every week between the said two places.

It is also admitted, in the statement, that the amount of eighty dollars has been demanded and refused.

Mr. Soule has referred me to the late decisions of the supreme court in the cases of Franklin & Anderson vs. Municipality No. One and No. 2. In those cases it has been fully and clearly determined that the councils of the corporation of New Orleans have to impose a tax for wharfages on vessels and steamboats mooring at their wharf.

Therefore, the rights of imposing the tax having been settled by the supreme court in the cases above recited, and the amount claimed not being disputed, I am of opinion that the plaintiff must recover.

It is, therefore, ordered and decreed that final judgment be entered in favor of plaintiffs against the defendants for the sum of eighty-two dollars, together with the costs of this suit.

(Signed) GALLIEN PREVAL, *Judge.*

1845, Febraury 18th. Notified in open court.

1845, February 19th. Defendants came this day into court, by their attorney, and filed their bond of appeal, returnable on the first Monday of March, 1845.

1845, February 20th. Notice of appeal issued.

I do hereby certify by these presents, that the above transcript is a true and correct copy of the proceedings on the records of this court, and all the documents, with the exception of the appeal bond, are the original ones.

New Orleans, March 3d, 1845.

Signed, J. B. SORAPURY, *Clerk.*

Bill.

Steamboat Sultana, Captain Pease and Owners,
To Municipality No. 1.

1845, January 13th. For the wharfage due by said steamboat $82

Affidavit.

STATE OF LOUISIANA,
City court of New Orleans:

Honorable Gallien Preval, presiding.

Personally came and appeared before this court, Auguste Rieffel, agent for Municipality No. One, who being duly sworn, deposes and says, that the steamboat Sultana, Captain Pease and Owners, are justly indebted to the Municipality No. One, in the sum of eighty-two dollars for wharfage, claiming a privilege, and that the defendant is on the eve of removing the property, of which he claims a privilege, from the jurisdiction of this court, in order to deprive him of his lien, wherefore he prays that a writ of provisional seizure may issue, and that the property be provisionally seized.

New Orleans, January 13th, 1845.

Signed, A. RIEFFEL.

Sworn to and subscribed before me, New Orleans, Jan. 13th, 1845.
Signed, J. B. SORAPURU, *Clerk.*

Provisional seizure and return.

THE STATE OF LOUISIANA,
City court of New Orleans:

To the City marshal, greeting:

Whereas A. Rieffel, agent for Municipality No. 1, has declared this day, on oath before me, that steamboat Sultana, Captain Pease and Owners, are justly indebted to Municipality No. 1, in the sum of eighty-two dollars for wharfage, and that he is afraid that the said steamboat Sultana will be removed from the jurisdiction of the court, you are therefore commanded to seize provisionally the said steamboat Sultana, and take the same into your possession until further orders of this court.

Given under my hand this 13th day of January, 1845.

By order of the court:
Signed, J. B. SORAPURU.

This within provisional seizure has been executed on the 13th January, 1845. Citation has been given to the first clerk of said steamboat Sultana. A keeper is on board called Henry Komar; Captain Pease was absent from his board.

Signed, P. H. HUARD,
Deputy Marshal.

Answer.

To the honorable G. Preval, judge of the city court of New Orleans.

In answer to the suit of Municipality No. One, of the corporation of the city of New Orleans, against the steamer Sultana, Horace Pease, the master of said vessel, and the owners thereof, Abijah Fisk and the said Horace Pease appear and allege, that they are the owners of the said steamboat Sultana; that the said vessel has been regularly enrolled and licensed according to the acts of Congress regulating such vessels engaged in the coasting trade, or in the navigation of the Mississippi river.

That under the said license the Sultana had been engaged in running weekly trips between the city of New Orleans and Vicksburg, in the State of Mississippi.

That she transported in such trips, on the river Mississippi, freight and passengers, and all such things as appertain to the commerce between the said places.

That engaged in such commerce, the said vessel was not liable to any tax, duty, or impost laid by the State of Louisiana, and by the corporation of the city of New Orleans, deriving its authority from the said State.

That by the Constitution of the United States no State or corporation deriving its authority from the State has the power to pass any law regulating or interfering with the commerce between the States, or to

lay any duty of tonnage. That by the laws of the United States the river Mississippi is made a common highway, and its navigation forever free from any tax, duty, impost, or toll imposed by the State of Louisiana, or any corporation deriving its authority from the said State.

That the same provisions are adopted by the constitution and laws of Louisiana, and were made a condition precedent to the admission of the State into the Union.

Defendants allege that the claim set up by the Municipality No. 1 is unauthorized by any valid ordinance of the corporation of the city of New Orleans, that it is in violation of the above provisions of the Constitution and laws of the United States and of the State of Louisiana, and that any law or ordinance of the corporation of the city of New Orleans, authorizing the levying of such a tax or duty as the one claimed in this suit, is unconstitutional and void, as contravening both the Constitution and laws of the United States and of Louisiana.

And further, that any such law or ordinance is unauthorized by the act of incorporation of the city of New Orleans.

Wherefore the defendants pray to be hence dismissed with judgment and costs in their favor, &c., &c.

Signed, ELMORE & KING,
Attorneys for defendants.

Statement of facts.

City court of New Orleans, before G. Preval, esq., associate judge.

MUNICIPALITY No. 1, OF THE CITY OF NEW ORLEANS,
vs.
THE STEAMBOAT SULTANA, Captain and Owners, Abijah Fisk and Horace Pease, claimants.

Case agreed.

1st. The general council of the city of New Orleans, on the day of [,] 1843, passed an ordinance in the words and figures following. (The ordinance to be annexed and copied into and form a part of this case.)

2d. The steamboat Sultana is a steamboat of five hundred and twenty-seven and $\frac{31}{95}$ tons burthen, duly licensed and enrolled according to the act of Congress, as appears by the enrolment and license issued at the port of New Orleans, hereto annexed, and made part of this case.

3d. The said steamboat was, and is, employed in the transportation of produce, goods, and passengers, from Vicksburg, in the State of Mississippi, and all intermediate ports to New Orleans, and from New Orleans to Vicksburg aforesaid.

4th. That the said steamboat did arrive in the port of New Orleans, on or about the day of January, 1845, from Vicksburg aforesaid, with goods, merchandise, and produce, laden on board at Vicksburg aforesaid, where she entered and discharged her cargo.

5th. That the said steamboat, in the regular course of her employment, makes one voyage every week between the said two places.

6th. That upon her arrival on the day of January, 1845, as aforesaid, demand was made of the owners and claimants, or the master, for the payment of the sum of eighty-two dollars, the tax accruing and claimed by the Municipality No. 1, of the city of New Orleans, in and by virtue of the section of the ordinance aforesaid, being the tax assessed and claimed by said Municipality upon said boat, upon each and every arrival of said boat in the port of New Orleans, on each and every voyage so made as aforesaid.

7th. Payment was refused by the owners, who are claimants herein, and the said steamboat was provisionally seized and taken into custody of the marshal by process of this court; Fisk and Pease, the owners, have claimed and bonded the boat, and made themselves defendants, and plead and made a defence, as will appear by their plea or defence filed.

If their plea be sustained, judgment to be for defendants. If the plea be overruled, and the ordinance adjudged legal and constitutional, and within the powers of the general council of the corporation of New Orleans, judgment to be for plaintiff.

(Signed) JNO. R. GRYMES.
ELMORE & KING,
Counsel for Plffs.

(Signed) CHRISTOVAL MOREL,
Of counsel for M'ty No. One.

Enrolment.

No. 92.—Permanent.

Enrolment, in conformity to an act of Congress of the United States of America entitled "An act for the enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same."

Horace Pease, of the city of New Orleans and State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn that he, together with Abijah Fisk, of the same place, are citizens of the United States, sole owners of the ship or vessel called the Sultana, of New Orleans, whereof he, Horace Pease, is at present master, and, as he has sworn, is a citizen of the United States, and the said ship or vessel was built at Jeffersonville, in the State of Indiana, in the year 1843, as per enrolment No. 54, issued at the port of Louisville, on the 15th day of November, 1843, now surrendered, being temporary property:

The same and said enrolment having certified that the said ship or vessel has one deck and no mast, and that her length is two hundred and thirty-seven feet, her breadth thirty feet six inches, her depth seven feet six inches, and that she measures five hundred and twenty-seven and $\frac{31}{95}$ tons; that she is a steamer, has a cabin above deck, and plain head:

And the said Horace Pease having agreed to the description and admeasurement above specified, and sufficient security having been given

according to the said act, the said steamboat has been duly enrolled at the port of New Orleans.

Given under our hands and seals, at the port of New Orleans, this third day of July, in the year one thousand eight hundred and forty four.

[Custom-house seal.]

(Signed) J. W. HINKS, *Dy. Col.*
(Signed) L. DELETRA, *Dy. N. Off.*

COLLECTOR'S OFFICE, 14*th January*, 1845.

PORT OF NEW ORLEANS:

I, John W. Hinks, deputy collector of the customs for the district and port of New Orleans, do hereby certify the within to be a true copy of the original now on file in this office.

Given under my hand and seal of office, at the custom-house of New Orleans, the day and year as above written.

[SEAL.]

(Signed) J. W. HINKS, *Dy. Col.*

License of a vessel over twenty tons, to carry on the coasting trade for one year.

No. 120.

DISTRICT AND PORT OF NEW ORLEANS:

In pursuance of an act of the Congress of the United States, entitled "An act for the enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same."

Horace Pease and Joseph H. Lyon, of New Orleans and State of Louisiana, having given bond that the steamboat called the Sultana, whereof the said Horace Pease is master, burden five hundred twenty-seven $\frac{3}{95}$ tons, as per enrolment dated at this port this day, and numbered shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified; license is hereby granted for the said steamboat called the Sultana, of New Orleans, to be employed in carrying on the coasting trade, for one year from the date hereof, and no longer.

Given under our hands and seal of office, at the custom-house of New Orleans, this third day of July, in the year of our Lord one thousand eight hundred and forty-four.

[Custom-house seal.]

(Signed) J. W. HINKS, *Dy. Col.*
(Signed) L. DELETRA. *Dy. N. Off.*

COLLECTOR'S OFFICE, 14*th January*, 1845.

PORT OF NEW ORLEANS:

I, John W. Hinks, deputy collector of the customs for the district and port of New Orleans, do hereby certify the within to be a true copy of the original now on file.

Given under my hand and seal of office, at the custom-house, the day and year as above written.

[SEAL.]

(Signed) J. W. HINKS, *Dy. Col.*

Bond.

Know all men by these presents, that we, Steamboat Sultana, Captain and Owners, and Joseph H. Lyon, are held and firmly bound unto Municipality No. One, his executors, administrators, and assigns, in the sum of one hundred and sixty-two dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this eighteenth day of February, in the year of our Lord one thousand eight hundred and forty-five.

Whereas the above bound Steamboat Sultana, Captain and Owners, this day filed a petition of appeal from a final judgment rendered against them, in the suit of Municipality No. One, in the city court of New Orleans, on the 27th day of February, 1845.

Now, the condition of the above obligation is such, that the above bound Steamboat Sultana, Captain and Owners, shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Joseph H. Lyon, surety, shall be liable in his place.

(Signed) HARMAN JONES.

Signed, sealed, and delivered in presence of—

(Signed) ——— ———

A true copy of the original.

(Signed) J. B. SORAPURU, *Clerk*.

Notice of appeal and return.

The State of Louisiana, city court of New Orleans, presided by Judge G. Preval.

To the marshal of the city of New Orleans, greeting:

You are hereby commanded to notify Municipality No. One, that Steamboat Sultana, Captain Pease, and Owners, have obtained an appeal from a final judgment rendered against them by this court, which appeal is made returnable for the first Monday of March, 1845, before the appellate court.

New Orleans, February 26, 1845.

(Signed) J. B. SORAPURU, *Clerk*.

Served a true copy of this citation of appeal on the mayor of the city, Ed. Montegut, at his office, in the hands of Mr. Theard, the secretary, on the 26th February, 1845.

(Signed) N. B. OUTLAW, *Dy. M'l.*

Testimony.

MUNICIPALITY NO. ONE
vs.
STEAMER SULTANA, CAPT. PEASE, and OWNERS.

City court of New Orleans.

Guirot, for plaintiffs, says that he is the treasurer of the First Munici-

pality; the wharves within the limits of the First Municipality cost yearly large sums of money to be kept in good repairs; that, since the year 1836, it appears that the First Municipality has paid three hundred and thirty-four thousand six hundred and ninety-six dollars and fifty-eight cents, for expenses of the port within its limits, that *it* is to say, to keep the port in good order up to the 28th February, 1845. It is his opinion that the amount above stated does not contain a full statement of the expenses, in so much that, from 1836 to 1839, the city surveyor, in the monthly tableau furnished by him of the monthly expenses of the municipality, neglected to establish what portions of those expenses should be charged to the port expenditures, which said expenses consisted of the salaries of the hands employed by the municipality, carts, &c. Deponent has made a tableau of said expenses, about one year ago, and, as far as he can recollect, they amount to one hundred thousand dollars; has made those calculations by approximations. Knows that the sum of three hundred and thirty-four thousand six hundred and ninety-six dollars and fifty-eight cents, above stated, to be correct, because, being the officer of the corporation, he has made the account himself. Knows that the wharves within the First Municipality have been destroyed, and the expenses for building them again have been very large; the expenses for keeping the port in good order, from the 1st April, 1844, to the 28th February, 1845, amount to forty thousand four hundred and sixty-eight $\frac{18}{100}$ dollars. He cannot say precisely what sum has been paid for the repairs of the wharves, but certainly the largest amount of all the said expenses have gone to the keeping of the wharves in good order. Since 1836 the wharves in the First Municipality have been destroyed every two years, and sometimes two years in succession. He considers that the wharves afford a great facility for discharging and loading vessels.

Cross examination.

Does not believe that all the wharves within the First Municipality have been destroyed every two years; some of the wharves have been partially destroyed and some totally destroyed. The wharves from St. Louis street down to Esplanade street are generally destroyed, but from St. Louis street to Canal street it is not so; that, from 1836 to 1845, the wharves from St. Louis street to Canal street have yielded ten thousand dollars more than the other wharves. He established his approximative estimation of the extra expenses of one hundred thousand dollars from the examination of the books, and from conversations with the surveyors, as no separate accounts were kept prior to 1839 of the expenses of the port. The costs of the buildings put up on the levee are not included in the expenses spoken above; that the taxes on steam vessels and ships coming from sea are much heavier than those on steamboats navigating on the river.

By the court.

Witness knows that steamboats navigating on the river come oftener and stay a shorter time than vessels coming from sea.

A. Rieffel for plaintiff says: He knows the steamboat Sultana and the owners thereof, she makes regular trips as long as she comes in the First Municipality; she makes weekly trips not during the whole year; she runs regularly four or five months in the year, and during the balance of the year she runs or trades to St. Louis, or elsewhere, and lands in the Second Municipality. Knows that workmen are daily employed in keeping the wharves in good order. Drays are allowed to go on the wharves situated above St. Louis street, for the facility of *of* steamboats. These wharves are exclusively appropriated for steamboats, and ships are not allowed to moor there; every kind of facilities are allowed to steamboats. Steamboats could not land at all without the wharves, because the land between the levee and water's edge is soft. The wharf where the Sultana moors is to be re-built nearly every two years. Deponent is the wharf master, and it is his duty to keep wharves free for the convenience of steamboats. The merchandises discharged from the boats are put on the wharves, and are taken away by the drays. Knows that merchandises remain all night on the wharves, and are under the surveillance of the police. Lamps are placed near these wharves for the convenience of persons going on board of steamboats, and vice versa; these lamps are lightened every night.

Cross examination.

The wharves are under the surveillance of witness, who is the wharf-master. It is not to his knowledge that any goods have been stolen from the wharves; all steamboat captains have watches themselves on goods they discharge. Steamboats furnish their stages to discharge their cargoes.

Examination in chief resumed.

Knows that goods have been lost by the sinking of wharves, and that the municipality has made good the losses and damages whenever a demand has been made.

Cross examination.

Capt. Tuft, who has suffered the loss, asked witness if the municipality would pay for the loss? Deponent answered yes; he gave a certificate to Capt. Tuft, who told him that he had been paid.

L's Surgi for plaintiff says: That he was formerly the deputy surveyor of the First Municipality, from May, 1840, to May, 1843. The annual expense for building and keeping the wharves of the municipality in good order are from twenty-five to thirty thousand dollars, exclusive of the salaries of the officers of the port; that the wharves from Custom-house to Hospital streets have been totally destroyed in the summers of the years 1840, 1843, 1844, and he thinks in 1841, but he is not positive. They have been destroyed four times in five years. This destruction was caused by the sinking of the batture, when the wharves

; think a great portion of the materials may be used again, but when they are swept away, the expenses are greater.

Cross examination.

All the wharves from Bienville to Hospital streets sunk four times in five years; the amount of twenty-five to thirty thousand dollars above stated include the expenses of the wharves. If the wharves should not sink, it would cost about five thousand dollars to keep them in repair.

The plaintiff has offered in evidence the ordinance of the general council of the year 1843, entitled "an ordinance amendatory of the existing ordinances concerning the levee dues within the port of New Orleans."

Jones for defendants says: He lives in this city; is acquainted with the port of New Orleans through its extent; has examined the wharves built by the municipalities; has never seen a wharf on the other side of the river; has been on the other side of the river. Is of opinion that about one-third of the shore of the river within the First Municipality is covered with wharves; thinks there is not one-tenth part of the shores of the Third Municipality covered with wharves. There is twenty-seven wharves in the Third Municipality, and one building; there is about $\frac{1}{2}$ mile from the square of the city to the upper boundary of the Third Municipality. The width of the twenty-seven wharves in the Third Municipality averages about from forty to forty-five feet. He thinks about one-sixth part of the shore of the Second Municipality is covered with wharves. The first wharf below Canal street, First Municipality, extends about sixty feet from the water's edge into the river, and the balance of the wharves from there to the market varies from eighty to three hundred feet from the water's edge. The weekly packets generally remain in New Orleans from fifty-six to sixty hours.

Cross examination.

Deponent is the clerk of A. Fisk, one of the owners of steamboat Sultana; has resided in New Orleans three years last November past. The length of the wharf from Canal street to Custom-house street is from three hundred and fifty to four hundred feet. Deponent has paced the wharves, has taken a memorandum of it; has not counted the wharves in the First Municipality.

By the court.

There is a season in the year, during which there is but two feet on the batture.

Ordinance offered in evidence by plaintiff.

GENERAL COUNCIL,
Sitting of Tuesday, May 23d, 1843.

An ordinance amendatory of existing ordinances concerning the levee dues in and for the port of New Orleans.

The general council ordains as follows:

Art. 1. That from and after the 31st day of August next, the levee

or wharfage dues on ships, and other decked vessels, and on steam vessels arriving from sea, shall be fixed as follows:

On each vessel	under	75	tons	-	-	-	-	$15.
Do	do	of 75	do.	and	under	100	- -	20.
Do	do	100	do	do		125	- -	25.
Do	do	125	do	do		150	- -	30.
Do	do	150	do	do		200	- -	40.
Do	do	200	do	do		250	- -	50.
Do	do	250	do	do		300	- -	60.
Do	do	300	do	do		350	- -	70.
Do	do	350	do	do		400	- -	85.
Do	do	400	do	do		450	- -	100.
Do	do	450	do	do		500	- -	115.
Do	do	500	do	do		550	- -	125.
Do	do	550	do	do		600	-	130.
Do	do	600	do	do		650	- -	135.
Do	do	650	do	do		700	- -	145.
Do	do	700	do	do		750	- -	160.
Do	do	750	do	do		800	- -	175.
Do	do	800	do	do		900	- -	190.
Do	do	900	do	do		1000	- -	205.
Do	do	1000	do	do		1100	- -	220.
Do	do	1100	do	do		1200	- -	235.
Do	do	1200	and upwards				- - -	240.

Art. 2. Be it further ordained, That from and after said 31st day of August next, the levee dues on steam vessels navigating on the river, and which shall moor or land in any part of the incorporated limits of the port, shall be fixed as follows:

On each steamer	under	75	tons	-	-	-	-	$12.
Do	do	of 75	do.	and	under	100	- -	15.
Do	do	100	do	do		150	- -	22.
Do	do	150	do	do		200	- -	30.
Do	do	200	do	do		250	- -	37.
Do	do	250	do	do		300	- -	45.
Do	do	300	do	do		350	- -	52.
Do	do	350	do	do		400	- -	60.
Do	do	400	do	do		450	- -	67.
Do	do	450	do	do		500	- -	75.
Do	do	500	do	do		550	- -	82.
Do	do	550	do	do		600	- -	90.
Do	do	600	do	do		650	- -	97.
Do	do	650	do	do		700	- -	105.
Do	do	700	and over				- - - -	120.

Art. 3. Be it further ordained, That hereafter it shall not be lawful for any pirogue, flat-boat, barge boat, or keel-boat to remain in port longer than twelve days, as fixed by the thirteenth article of an ordinance approved 21st October, 1839, under a penalty of twenty-five

dollars; and it shall be the duty of the wharfingers of the several municipalities to cause to be removed beyond the limits of the port any pirogue, flat-boat, or other craft, found in violation of this ordinance within the limits of their respective municipalities. The fines arising from any violation hereof shall be recoverable before any court of competent jurisdiction, of the owner, agent, or consignee of such pirogue, flat-boat, or other craft, for the benefit of the municipality within which the offence may be committed.

Art. 4. Be it further ordained, That hereafter it shall not be lawful for any flat-boat, keel-boat, barge, or old hull to remain within the limits of the port longer than twenty-four hours, after the discharge of its cargo, under the penalty of twenty-five dollars, recoverable as aforesaid; and after the expiration of said twenty-four hours, it shall be the duty of the wharfinger of either of the municipalities to cause to be removed beyond the limits of the port, or to turn adrift without delay, any such flat-boat, keel-boat, or other craft in contravention.

Art. 5. Be it further ordained, That in case any captain, owner, or person in command of any steam-boat, flat-boat, barge, keel-boat, or other craft, shall neglect or refuse to obey the orders of the wharfinger, to conform to the ordinances regulating the port, he or they shall be liable to a fine of twenty-five dollars to fifty dollars for each offence, recoverable as aforesaid.

Art. 6. Be it further ordained, That from and after the 31st day of August next, all ships, and other decked vessels, and steam vessels, arriving from sea, which shall have landed or moored in front of one municipality, and shall have paid, or be liable to pay, the levee dues to such municipality, and which shall afterwards remove from such municipality to one of the other municipalities, shall pay to the municipality to which they remove the following dues:

All vessels over		750	tons	-	-	-	-		$3.00	per day.
Do	do	500	do.	and	less	than	750	-	2.50	do
Do	do	300	do	do	do		500	-	2.00	do
Do	do	100	do	do	do		300	-	1.50	do
Do	under	100	-	-	-	-	-		.75	do

Said daily levee dues to be collected for every day such vessel may remain in the port of the municipality to which they have removed, the day of removal and departure excepted.

Art. 7. Be it further ordained, That so much of all existing ordinances as is inconsistent with the provisions of this ordinance, is hereby repealed.

A true copy. (Signed) REYNIS, *Secretary.*

New Orleans, 21st April, 1845.

Judgment rendered April 4th, 1845.

CITY COURT OF NEW ORLEANS,
April 4th, 1845.

Present, the honorable T. W. Collens.

MUNICIPALITY No. ONE
vs.
STEAMBOAT SULTANA, Capt. PEASE, and OWNERS.

This cause came on this day to be tried. Present, C. Morel for plaintiff, King and Elmore for defendants.

The court considering that the law and evidence in this case are in favor of the plaintiff, it is ordered that the judgment of the court below be affirmed, with costs.

(Signed) T. W. COLLENS,
Signed *April 8th*, 1845. *Senior judge.*

Petition of appeal.

To the honorable T. W. Collens, the presiding judge of the city court of New Orleans:

The petition of Abijah Fisk and Horace Pease respectfully represents, that they are advised, and believe, there was error in the final judgment of this honorable court, rendered against them on the 4th of April, 1845, in the suit of Municipality No. One vs. Steamer Sultana, and Abijah Fisk and Horace Pease, which error will work to them irreparable injury unless they can be relieved therefrom by an appeal.

Wherefore they pray that a suspension appeal to the parish court of the parish and city of New Orleans, be allowed them according to law, the necessary bond having been given, that the plaintiff be duly cited to answer the said appeal, and for all other relief in the premises, &c., &c.

(Signed) ELMORE & KING,
Att'ys for Def'ts.

Order granting appeal.

Let an appeal be allowed, returnable to the parish court for the parish and city of New Orleans, on the 4th Monday of April, 1845, on the defendant's giving bond in the sum of two hundred dollars, conditioned as the law requires.

April 9th, 1845.

(Signed) T. W. COLLINS,
Sen'r Judge.

Bond.

Know all men by these presents, that we, Abijah Fisk, and Horace Pease, and Joseph Lyon, of the city of New Orleans, are held and firmly bound unto Municipality No. One, its successors and assigns, in the sum of two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this

9th day of April, in the year of our Lord one thousand eight hundred and forty-five.

Whereas the above bound Abijah Fisk and Horace Pease this day filed a petition of appeal from a final judgment, rendered against them in the suit of Municipality No. One vs. Steamer Sultana, A. Fisk, and Horace Pease, in the city court of New Orleans, on the 4th day of April, 1845:

Now, the condition of the above obligation is such, that the above bound A. Fisk & H. Pease shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal, otherwise that the said Joseph Lyon, the surety, shall be liable in their place.

(Signed) ABIJAH FISK, [L. S.]
HORACE PEASE,
Per ABIJAH FISK, [L. S.]
JOSEPH H. LYON. [L. S.]

Signed, sealed, and delivered in presence of—

City court of New Orleans.

I, A. Dreux, clerk of the city court of New Orleans, do hereby certify, that the above and foregoing twenty-nine pages contain a complete transcript of the record of appeal in the case of Municipality No. One vs. Steamer Sultana, Captain Pease and owners, and also of the proceedings had in this court on said appeal, and of the evidence adduced.

Clerk's office, April 21st, 1845.

(Signed) A. DREUX, *Clerk.*

Citation of appeal.

The State of Louisiana. City court of New Orleans, to Municipality No. One.

Whereas A. Fisk and H. Pease have appealed from a judgment rendered against them, which appeal is returnable to the parish court for the parish and city of New Orleans, on the fourth Monday of April, 1845, you are hereby cited to appear in said court on the day aforesaid, to answer to said appeal.

Witness the Hon. T. W. Collins, senior, presiding judge of said court, this 9th day of April, 1845.

(Signed) A. DREUX, *Clerk.*

MUNICIPALITY No. ONE
vs.
STEAMER SULTANA & ALS.

Marshal's return.

Received April 9th, 1845, and on the same day served a true copy of the within citation, with an accompanying copy of the petition of

1754,

appeal on Municipality No. 1, by serving it at the office of the mayor, on E. Montegut, mayor, in person.

Returned, New Orleans, April 9th, 1845.

(Signed) E. BEAUREGARD, *D'y M.*

Proceedings before the parish court. Order. June 9th, 1845.

A. FISK & al. vs. Municipality No. 1. } 16,523.

E. B. CHURCH & al. vs. The same. } 16,628.

Municipality No. 1, appellee, vs. Steamer Sultana & al., appellants. } 16,664.

These three causes having been cumulated, as per agreement, on file, came on this day for trial before the court.

ELMORE & KING, & GRYMES, esqs., *for Fisk & al.*

SOULE & MOREL, esqs., *for Municipality No. One.*

After hearing testimony until a late hour, said causes were continued until to-morrow, at 10 o'clock, A. M.

Agreement. Filed June 9th, 1845.

CHURCH & MITCHELL vs. Municipality No. 1.

FISK & PEASE vs. The same.

MUNICIPALITY No. one vs. Steamer Sultana.

It is agreed that all the above cases shall abide the result of the suit of the Municipality No. One vs. Sultana & owners, the plaintiffs being at liberty to settle by proof, before final decision, the amounts claimed by each suit as having been paid in error. The evidence introduced in the cases of Fisk & Pease vs. Municipality No. One, and in the case of Church & Mitchell vs. The Same, shall be considered as introduced in the case of Municipality No. One vs. the Steamer Sultana and owners, now in this court on appeal from the city court.

(Signed) ELMORE & KING, *For Plff. and Appts.*

(Signed) JNO. R. GRYMES, *For Plffs.*

(Signed) P. SOULE, C. MOREL, *Of counsel for defendants and Appellees.*

Continuance.—June 10th, 1845.

FISK and al. vs. MUNICIPALITY No. 1. } 16,523.

CHURCH vs. The same. } 16,628.

MUNICIPALITY No. 1, appellees, vs. STEAMER SULTANA and al., appellants. } 16,664.

These three causes came on this day for trial before the court, pursuant to adjournment.

After hearing testimony and arguments of counsel until a late hour, said causes were continued until Thursday morning, the 12th instant, at 10 o'clock.

Testimony—filed June 10th, 1845.

Testimony taken in open court, June 9th, 1845.

A. J. Guirot, for Fisk and al., sworn, says: That he is treasurer for the 1st Municipality. Having examined the accounts annexed to the petition, in the case of A. Fisk and al. vs. Municipality No. 1, witness says that it is correct, and that the different amounts therein set forth have been paid to the First Municipality; witness does not recollect at what time the first wharves were built in front of the First Municipality; some of them have been built before the division of the city, but they have been washed away, and rebuilt since; the present wharves have been built at different periods, and some of them within the last year; out of the forty thousand dollars in the report mentioned as for "l'entretien du port," the costs of building of such wharves as have been constructed in the course of the last year, and of keeping the other wharves in repair, are included. Previous to the division of the city, there were not as many wharves as there are now; witness thinks that in 1836 the vessels were moored to the wharves, and made use of them to unload and take in their cargoes; as far as witness recollects, when he was a boy, the vessels landed their cargo on the levee; there were no wharves then. From the first of April, 1844, to twentieth February, 1845, the Municipality No. One received from ships, for wharfage, thirty-six thousand thirty-five $\frac{28}{100}$ dollars, and from steamboats forty-five thousand three hundred and fifty-five $\frac{37}{100}$ dollars. Witness having examined the account annexed to the petition, in the case of C. B. Church and al. vs. Municipality No. One, says that the account therein mentioned has been collected by the municipality.

Cross examined.

Witness states, that if the works that are executed in front of the First Municipality, and kept in order at great expense, whether they be levees

or wharves, had not been executed, or were abandoned by the Municipality No. 1, the landing of sailing or steam vessels, at those places where there is a batture, would be altogether impossible at low water, and exceedingly difficult at high water Witness means to say, that at low water the landing could not take place immediately on the quai, and that at high water the vessels could not reach the quai, in most places, without the interposition of a wooden bridge or some other works of that kind. The unloading of goods from vessels at low-water mark would, in the absence of the works alluded to, be rendered almost impracticable, owing to the softness of the ground, which incessant alluvions form between the quays and the river.

At high-water mark the landing of goods would certainly be easier, but still not without great difficulty, unless they were facilitated by means of stages or of some other wooden bridge.

Witness considers that he has, generally at least, a pretty correct idea of the costs which might be incurred in consequence of the transportation from steam or sailing vessels to the quai or levee of New Orleans, and from the quai or levee to the steam or sailing vessels, if the works interposed between the quai or levee and the river did not exist. Witness says that he does not consider himself a good judge of what might be the expenses of loading or unloading steamboats or sailing vessels if the wharves now erected at the places where they *laid* did not exist; but he can say this much, that if those works were not there, and (admitting that at first carts and drays could approach the boats or vessels) the landing left to itself, [it] would become totally impracticable, and certainly the expenses would in all cases be higher than they are now—that wharves and other works have so much contributed to facilitate the landing. The amount forty thousand four hundred and sixty-eight 18-100 dollars embraces very nearly all the expenditures incurred between the 1st of April, 1844, and the 20th February, 1845, for the building and maintaining the wharves in good repair, and for the other expenses of the port; but the lighting of the levee is not comprised, nor the salaries of the officers who superintend the port.

(It is admitted that the fact of New Orleans being a seaport, and the vast amount of goods imported or exported into it and from it, increases, to a considerable extent, the general expenditures in police, paving, &c.)

The amount of expenses during the period comprised between the 1st of April, 1844, and the 20th of February, 1845, as nearly as can be stated, *are* about three hundred and fifty thousand dollars, as exhibited by the report now filed and marked No. 1.

(It is admitted that the Sultana is owned in New Orleans.)

J. W. Zacharie, for Fisk and als., sworn, says: That he resides in New Orleans since 1803. Witness thinks that it was in 1831 or 1832 that the corporation first undertook to build wharves; but the attempts were not general until 1836, and before that they were not substantial. Witness thinks that the first attempt to build wharves generally in front of the city was in 1836, after the division of the city into three muni-

cipalities. Witness believes that the division of the city into three municipalities, and the rivalry created by said division, was the cause of the large number of wharves that have been built to attract commerce to each municipality. Before 1836 ships and steamboats loaded and unloaded by means of stages made of spars and planks. Stages of the same description must be used now, because in high water the vessels are considerably higher than the wharves, and in low water they are lower. When there were no wharves, some parts of the levee were more accessible than others to vessels, and more favorable to landing, and such parts would naturally attract vessels there for the purpose of unloading and taking their cargoes.

Cross examined.

The evidence just given by witness relates to the port as it was anterior to 1836. Since 1836, and particularly in the actual condition of the port of New Orleans in the whole extent of the three municipalities, the quai and levee in the front of said port could not be approached, in most parts, were it not for the wharves constructed opposite to said quai or levee and projecting into the bed of the river. The wharves and other works constructed on the levee opposite to the port of New Orleans, do contribute considerably towards facilitating the loading and unloading of vessels, and actually diminish to a large amount the expenses which would be incurred by the shipping if the said wharves and works had not been erected. Witness considers that the replacing of those wharves, which from time to time are swallowed up by the river, and the keeping in repair of the other wharves and of the levee, constitute a very heavy charge on the three municipalities; but witness thinks, however, that the charges made by the city in consideration of those wharves are more than the equivalent for the expenses incurred. Witness is a merchant in this city, and is the owner of a ship, but has no interest in any steamboat.

Chief examination resumed.

During his long residence in this city, witness has had occasion to examine the river and the landing. Witness has formerly been an extensive owner of ships dealing with this port. Witness believes that the building of the wharves contributes to the increase of the battures. Opposite the "Mint" vessels could land without the assistance of wharves, and from thence down to the Tobacco warehouses, to the extent of about two miles and a half, there is no portion of the post up town where vessels could land without the assistance of wharves. In the upper part of the city, in the Second Municipality, the battures have been levied in, and small wharves built. Some are about one hundred feet long, and some perhaps not more than twenty.

Cross examined de novo.

There is very little commerce in the Third Municipality; only *fret-*

ting ships which *lay* by there, load and unload, and that very seldom, bring in anything of any consequence.

Chief examination resumed.

If there were no wharves in the First and Second Municipalities, of course the Third Municipality would get all the shipping.

J. A. Bourgerol, for Municipality No. One, sworn, says: That he has been surveyor of the 1st Municipality, and *had* been surveyor of the old corporation—in all about seven years. Witness has been now twenty-one year[s] in this country, and has always resided in New Orleans. Witness, in his capacity of surveyor, has had occasion to follow the different changes the port has undergone, and has paid peculiar attention to the matter. The port of New Orleans within the limits of the First Municipality has been filling up considerably since 1830, and more so since 1836. The incessant increases of alluvial deposites, made on the banks of the river in front of that part of the port of New Orleans, would have considerably impeded, and, indeed, almost rendered impossible the landing of any steam or sailing vessels to the quais, or to the levee in front of the port, had not the works executed on the levee and the wharves constructed opposite to them been effected. The loading and unloading of vessels of any kind, had not the works been there, would have become, if not impossible, at least exceedingly difficult. From the banks of the river in front of the port, the ground is sloping down to an extent from three hundred to five hundred feet, and this prevents vessels at low water from landing, but at a considerable distance from the main quai or levee. At high water vessels may approach nearer to the quai or levee, but still could not load or unload with[out] the interposition of long stages or of other works of a similar nature. But, by means of the works executed on the levee, and of the wharves built in front of it, vessels of any kind are enabled to effect a safe and easy landing, and to load and unload on the quai with the greatest facility. If vessels had to load and unload in the absence of the wharves and other works which render the quai and levee so accessible, they certainly would, in witness's opinion, have to undergo considerable expenses which they can now spare. Witness cannot state with precision the expenses which such a state of things would impose on steamboats like the Sultana upon every voyage which she might effect to the port of New Orleans. It would depend much on the particular places or landing at which she might stop, and of the state of the river at the time of her landing. Such expenses might sometimes go as high as two hundred dollars, and sometimes to something less; but in all cases the expense, in witness's opinion, (for he only gives his opinion,) the expense would be rather considerable. In a word, the landing of the port of New Orleans, and the loading and unloading of vessels on its quai or levee, *is* so considerably facilitated by the wharves and other works erected in front of its quai and levee, that the expenses to be borne by said vessels at the said port are certainly diminished, at least in most cases, of more than the relative amounts which they have to pay for wharfage.

Cross examined.

Witness says, that if there were no levee in New Orleans, the city would overflow every year; the height of the levee is from four to five feet above the level of Levee street, which is the nearest street to the river. In the country it has about the same height; there is not much difference above or below the city. Witness does not know how the vessels landed before the wharves were built. The ground of the river slopes to an extent of from three hundred to five hundred feet, but it is not the case every where in front of the city; in some cases it is different; from the beef market, down, the water near the shore is deeper than it is above. The state of the port in front of the 1st Municipality is such, that if there where no wharves in front of it, that the vessels would necessarily have to land somewhere else when they come along side of the levee; but in front of the three municipalities, and therefore in the whole port of New Orleans, there is hardly a place where landing could be effected without wharves.

June 10*th*, 1845.

Joseph H. Lyon, for Fisk and al., sworn, says, that he resides in New Orleans since about nine years. When witness arrived here, there were very few wharves built; there were two or three below, and one or two above. Most of the wharves were built after the division of the city into municipalities. Witness' opinion is, that wharves were built for the improvement of the city, to draw business, and for the convenience of the public. Witness thinks that vessels might land if there were no wharves from the lower corner of the beef market, down; they would require some staging. In the upper part of the port they might land, if there were no wharves from Conti to Bienville streets, and from the upper cotton press up to the line of the city of Lafayette, with the exception of one square; there are about three miles of the port, witness believes, where vessels might land if there were no wharves. Witness has some experience of wharf building; has superintended the building of Mr. Fisk's wharf, in front of the city of Lafayette; part of said wharf is for ships, and part for steamboats. It is two hundred and fifty feet long by fifty-five feet broad; it cost three thousand two hundred dollars. They generally charge there, five dollars to steamboats for wharfage. Witness thinks there are now six wharves at Lafayette.

Cross examined.

Witness is in the employment of Mr. Fisk, and is his general agent. Witness' profession is mercantile, but he does a little of every thing, building and trading. Witness never surveyed the port of New Orleans, nor has he measured its depth at low water or high water. Being demanded whether he does not intend to say that the building of wharves in the port of New Orleans, and the keeping of the levees in the condition in which they now stand, has not considerably contributed towards ameliorating the shipping, he answers: That certainly those works are more to the convenience of the shipping than otherwise. Witness says

that he did state, that his opinion was, that ships and other vessels might easily land on the quais of the port from the beef market, down, without the assistance of wharves; does not know that his opinion might be preferable to that of the surveyor's who gave evidence in the case, but has [seen] some ships landing below the beef market within the last two years without the assistance of wharves. Witness says that in that part of the port to which he has alluded, the bank of the river is nearly perpendicular; in other places, the ground left uncovered by the Mississippi, extends about thirty-five feet; the description just given applies pretty nearly to the whole port from the beef market to its lower limits.

Chief examination resumed.

Witness thinks that the building of wharves has contributed to the increase of the battures.

Jean Communy, for Municipality No One, sworn, says, that he is surveyor of the 1st Municipality since 1840. Witness is a native of Louisiana, and about thirty-seven years old. Witness has made a special study of the successive changes which the river has from time to time effected in the port of New Orleans, and which it still effects every day. Since 1834, when he came from Europe to New Orleans, witness has had occasion to remark the incessant deposits which the river leaves within the basin of the port of New Orleans, which embarrass and are constantly filling it, immediately opposite the quai or levee of New Orleans. In a considerable portion of the port, the landing of vessels to its quai or levee would be wholly impracticable, were it not for the wharves constructed in front of said port. In other parts of the port, and for instance, at some places below the meat market, vessels might approach nearer to the quais, but still would have to use double stages of about sixty feet each. This might be done in those places where the land which the Mississippi leaves uncovered extends only from sixty to eighty feet; but there are other places below the meat market where the soft ground which the Mississippi leaves uncovered at low water, extends as far as 100 feet, but that ground sometimes is on a sudden swallowed up by the river. The witness considers that the building of wharves in the port of New Orleans, and particularly within the limits of the First Municipality, are far from being a luxury or a mere bait to attract commerce; they are, on the contrary, a necessity, imposed upon the municipal authorities of the city by the nature of the soil and the caprices of the river. The port would almost be impracticable were it not for those wharves, and for the works effected on the quais or levee. The port of New Orleans, within the first municipality, and with respect to the levees or quais and wharves, constitutes the main object of the incessant care, attention, and watching of the municipal officers. It is one of the heaviest burthens imposed upon the municipality. The Third Municipality is certainly the portion of the city of New Orleans least favored with any of those conveniences which might be calculated to attract commerce. When ships cannot get their cargoes, they go and lay there awaiting better times, or better opportunities, and comparatively speak-

Cross examined.

Witness says, that if there were no levee in New Orleans, the city would overflow every year; the height of the levee is from four to five feet above the level of Levee street, which is the nearest street to the river. In the country it has about the same height; there is not much difference above or below the city. Witness does not know how the vessels landed before the wharves were built. The ground of the river slopes to an extent of from three hundred to five hundred feet, but it is not the case every where in front of the city; in some cases it is different; from the beef market, down, the water near the shore is deeper than it is above. The state of the port in front of the 1st Municipality is such, that if there where no wharves in front of it, that the vessels would necessarily have to land somewhere else when they come along side of the levee; but in front of the three municipalities, and therefore in the whole port of New Orleans, there is hardly a place where landing could be effected without wharves.

June 10*th*, 1845.

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Cross examined.

Witness is in the employment of Mr. Fisk, and is his general agent. Witness' profession is mercantile, but he does a little of every thing, building and trading. Witness never surveyed the port of New Orleans, nor has he measured its depth at low water or high water. Being demanded whether he does not intend to say that the building of wharves in the port of New Orleans, and the keeping of the levees in the condition in which they now stand, has not considerably contributed towards ameliorating the shipping, he answers: That certainly those works are more to the convenience of the shipping than otherwise. Witness says

that he did state, that his opinion was, that ships and other vessels might easily land on the quais of the port from the beef market, down, without the assistance of wharves; does not know that his opinion might be preferable to that of the surveyor's who gave evidence in the case, but has [seen] some ships landing below the beef market within the last two years without the assistance of wharves. Witness says that in that part of the port to which he has alluded, the bank of the river is nearly perpendicular; in other places, the ground left uncovered by the Mississippi, extends about thirty-five feet; the description just given applies pretty nearly to the whole port from the beef market to its lower limits.

Chief examination resumed.

Witness thinks that the building of wharves has contributed to the increase of the battures.

Jean Communy, for Municipality No One, sworn, says, that he is surveyor of the 1st Municipality since 1840. Witness is a native of Louisiana, and about thirty-seven years old. Witness has made a special study of the successive changes which the river has from time to time effected in the port of New Orleans, and which it still effects every day. Since 1834, when he came from Europe to New Orleans, witness has had occasion to remark the incessant deposits which the river leaves within the basin of the port of New Orleans, which embarrass and are constantly filling it, immediately opposite the quai or levee of New Orleans. In a considerable portion of the port, the landing of vessels to its quai or levee would be wholly impracticable, were it not for the wharves constructed in front of said port. In other parts of the port, and for instance, at some places below the meat market, vessels might approach nearer to the quais, but still would have to use double stages of about sixty feet each. This might be done in those places where the land which the Mississippi leaves uncovered extends only from sixty to eighty feet; but there are other places below the meat market where the soft ground which the Mississippi leaves uncovered at low water, extends as far as 100 feet, but that ground sometimes is on a sudden swallowed up by the river. The witness considers that the building of wharves in the port of New Orleans, and particularly within the limits of the First Municipality, are far from being a luxury or a mere bait to attract commerce; they are, on the contrary, a necessity, imposed upon the municipal authorities of the city by the nature of the soil and the caprices of the river. The port would almost be impracticable were it not for those wharves, and for the works effected on the quais or levee. The port of New Orleans, within the first municipality, and with respect to the levees or quais and wharves, constitutes the main object of the incessant care, attention, and watching of the municipal officers. It is one of the heaviest burthens imposed upon the municipality. The Third Municipality is certainly the portion of the city of New Orleans least favored with any of those conveniences which might be calculated to attract commerce. When ships cannot get their cargoes, they go and lay there awaiting better times, or better opportunities, and comparatively speak-

ing, it may be said, that there is no commerce in the Third Municipality. Assuming that vessels in order to avoid paying wharfage should land at some place in the lower part of the port of the 3rd Municipality, and there unload, the expenses for transporting the cargo to those places where commerce is flourishing, would certainly be much more considerable than the wharfage paid for landing, and loading and unloading at the wharves in front of the First Municipality.

Cross examined.

Witness is a surveyor of the First Municipality since 1840; has not been surveyor of any other portion of the city. Witness is better acquainted with the port in the First Municipality, than of any other portion of the port, but in taking the soundings he has gone as far as the Second Municipality. Witness surveyed the port in the Second and Third Municipality, only by sounding the depth of the river. In the Third Municipality there is a very large cotton press. Witness has seen ships land in the First Municipality, and then go down to the Third Municipality, and receive this cargo from the press. During the business season generally, there are a number of vessels moored in the Third Municipality.

Chief examination resumed.

In front of the cotton press in the Third Municipality, there is a very large wharf extending about eighty feet in the river, and about three hundred feet long. Besides this one, there are a great number of wharves in the Third Municipality. The port within the First Municipality extends about four-fifths of a mile, and double that in the Second Municipality. From the middle of the Place d'Armes to the lower limit of the First Municipality, there are about two-fifths of a mile.

Order and continuance. June 12th, 1845.

16,523. Fisk & al. vs. Mun'ty No. 1.
16,628. Church vs. the same.
16,664. Mun'ty No. 1 vs. ste'r Sultana & al.

These three causes came on this day for trial before the court, pursuant to adjournment Tuesday last.

After hearing argument until a late hour, said causes were continued till to-morrow morning at 10 o'clock.

Continuance. June 13th, 1845.

16,523. Fisk & al. vs. Mun'ty No. 1.
16,628. Church & al. vs. the same.
16,664. Munic'ty No. 1 vs. steamer Sultana and al.

These three causes came on this day for trial before the court, pursuant to adjournment.

After hearing arguments of counsel until a late hour, said causes were continued to to-morrow, at 11 o'clock, A. M.

1758.

Continuance. June 14th, 1845.

16,523. Fisk & al. vs. Mun'ty No. 1.
16,628. Church & al. vs. the same.
16,664. Munic'ty No. 1 vs. steamer Sultana & al.

These three causes came on this [day] before the court, pursuant to adjournment; when, by consent, the argument was postponed until Friday, the 14th of November, 1845, at 10 o'clock, A. M.

Order. November 14th, 1845.

16,523. Fisk & al. vs. Mun'ty No. 1.
16,628. Church & al. vs. the same.
16,664. Munic'ty No, 1 vs. steamer Sultana & als.

These three causes came on this day before the court, pursuant to adjournment on the 14th of June, 1845; when, after hearing arguments of counsel, the court took time to advise.

Judgment. March 12th, 1846.

MUNICIPALITY NO. ONE, app'ee,
vs.
STEAMER SULTANA, Capt. Pease and owners, app'ts. } 16,661.

Appeal from the city court.

The appellants in this case pray for the reversal of a judgment originally rendered by G. Preval, associate judge of the city court, and confirmed by the presiding judge of said court, condemning the defendants and appellants to pay to the plaintiffs and appellees a sum of eighty-two dollars, for wharfage. The suit of the Municipality is founded upon an ordinance of the general council, on file, dated ———.

The defendants and appellants resisted the payment of said wharfage, as well in the two courts below as in this court, on two grounds, to wit:

1st. That such an ordinance is unauthorized by the act of incorporation of the city of New Orleans; and, 2d: That even were it authorized by the laws of the State, it would be invalid as contrary to the Constitution and laws of the United States.

With regard to the first point, I need only refer to the 20th section of the act dividing the city of New Orleans into three municipalities, (Bullard's & Curry's Digest, page 127,) which, among the powers vested in the general council, contains the following: *To fix a uniform rate of wharfage to be paid by ships, steamboats, and other crafts mooring in front of all parts of the city.*

With regard to the second point, I may be permitted to refer to the opinion I had occasion to give in the case of *the Municipality No. two vs. Capt. E. Wood of the ship Alabama*, in which I reviewed with all the care and attention which I am capable of, the authorities on the constitu-

tional questions which arose in that as well as in the present case, whether an ordinance of one of our municipalities for the collection of wharfage was a violation of the Constitution of the United States, and I came to the conclusion that such an ordinance did violate neither of the constitutional provisions giving Congress power to lay and collect taxes, duties, imposts, and excises; to regulate commerce with foreign nations, among the several States, and with the Indian tribes; nor those prohibiting the laying of taxes or duties on articles exported from any State; the laying by any State, without the consent of Congress, of any imposts or duties on imports and exports, (except in certain stated cases,) and the laying by any State without the consent of Congress of any duty on tonnage. I then considered *wharfage as a remuneration or compensation for a facility afforded to commerce;* and I must confess that notwithstanding the elaborate and able arguments of the distinguished counsel, it has been my good fortune to listen to on this occasion, I still persist in my former opinion, at least with regard to the point of constitutionality of an ordinance establishing a wharfage on ships, vessels, or steamboats. The decision of our supreme court in the two cases of Worsley & Forman, app'ee, vs. Municipality No. Two, app'ts, and Franklin & Henderson, app'ee, vs. Municipality No. One, app'ts, took the same view of the constitutional questions, altho' upon another ground, which does not apply to the present case, they differed with me in opinion.

It is, therefore, ordered, adjudged, and decreed, that the judgment of the city court be affirmed with costs.

(Signed) CHARLES MAURIAN, *Judge.*

New Orleans, April 22d, 1846.

Petition of appeal.

Filed April 23d, 1846.

To the honorable the judge of the parish court, of the parish and city of Orleans:

The petition of Horace Peas and Abijah Fisk, the owners of the steamer Sultana, respectfully represents, that a judgment was rendered on the 22d of April, against them in the suit of Municipality No. One, against them and the steamer Sultana. Your petitioners are advised and believe there is error in said judgment, which error will work to their irreparable injury unless they can be relieved therefrom by an appeal.

Wherefore [your] petitioners pray, that having furnished the bond required by law, that a suspensive appeal be granted to them from said judgment, that the same be made returnable according to law, that the plaintiffs be cited to answer the same, and for all other relief in the premises, &c. (Signed) ELMORE & KING,

Att'ys for Def'ts.

Order.

Let an appeal be allowed in this case, returnable in the supreme court, on the third Monday of May next, 1846, on the appellants giving

bond in the sum of two hundred and fifty dollars, with Geo. G. Steever as surety, conditioned as the law directs.

(Signed) CHARLES MAURIAN, *Judge.*

New Orleans, April 23d, 1846.

Bond.

Know all men by these presents, that we, Horace Peas and Abijah Fisk and Geo. G. Steever are held and firmly bound unto Municipality No. One of the city of New Orleans, its successors, administrators, and assigns, in the sum of two hundred and fifty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 23d day of April, in the year of our Lord one thousand eight hundred and forty-six.

Whereas the above bound Horace Peas and Abijah Fisk this day filed a petition of appeal from a final judgment rendered against them in the suit of Municipality No. 1 vs. Steamer Sultana, and said Peas and Fisk, in the parish court for the parish and city of Orleans, on the 22d day of April, 1846.

Now, the condition of the above obligation is such, that the above bound Horace Pease and Abijah Fisk shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said George G. Steever, the surety, shall be liable in their place.

Signed, sealed, and delivered in presence of—

(Signed) GEO. G. STEEVER. [L. S.]

STATE OF LOUISIANA,

Parish court for the parish and city of New Orleans:

I hereby certify, that the above and foregoing forty-five pages do contain all the testimonies adduced in the cause, and a full and complete transcript of the record of the case, except document No. one, of which copy is hereto annexed, wherein Municipality No. One is plaintiff, and Steamer Sultana, and Horace Pease, and A. Fisk, owners, are plaintiffs, appealed from the city court of New Orleans to this court, and now on the records thereof under the No. 16,664.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 20th [SEAL.] day of May, in the year of our Lord 1846, and the 70th of the independence of the United States.

(Signed) J. OLLIE, *Dy. clerk.*

I do hereby certify, that the above and foregoing transcript of record contains all the matters of facts upon which this case was tried in the first instance, and all the evidence adduced by the parties, except document No. one, of which a copy is annexed.

In faith whereof I have hereunto set my hand, at the city of New Orleans, on the 20th day of May, 1846, and the 70th year of the American independence.

(Signed) CHARLES MAURIAN, *Judge.*

Supreme court of the State of Louisiana.

Endorsment.—68, *Parish court*.

MUNICIPALITY No. ONE, appellee,
vs.
STEAMER SULTANA, Capt. Pease & owners, appellants.

ELMORE & KING, Esqs., *for App'ts.*
C. MOREL, Esq., *for Appellee.*

Supreme court.—Filed May 21st, 1846.
(Signed) EUGENE LASERE, *Clerk.*

Order to continue—June 17th, 1846.

MUNICIPALITY No. 1, appellee,
vs.
STEAMER SULTANA, Capt. Pease & owners, appellants. } 68.

It is ordered that these cases be continued for want of time.

Order to continue—November 2d, 1846.

MUNICIPALITY No. 1, appellee,
vs.
STEAMER SULTANA, Capt. Pease & owners, appellants. } 68.

This cause was this day called for trial, and there being no counsel present, it was ordered to be continued, to be placed at the foot of the docket.

Order to continue—December 7th, 1846.

MUNICIPALITY No. 1, appellee,
vs.
STEAMER SULTANA, Capt. Pease & owners, appellants. } 68.

It is ordered that this cause be continued by preference to be called at the next calling of cases.

Order to continue—December 21st, 1846.

MUNICIPALITY No. ONE, appellee,
vs.
STEAMER SULTANA et als., appellants. } 68.

It is ordered that this cause be continued for want of time.

Order to continue—January 11th, 1847.

MUNICIPALITY No. ONE, appellee,
vs.
STEAMER SULTANA et als., appellants.

It is ordered that this cause be continued for want of time.

Appearance and argued—April 19th, 1847.

MUNICIPALITY No. ONE, appellee,
vs.
STEAMBOAT SULTANA, Captain Pease, and owners, appellants. } 68.

This cause was this day argued by C. Roselius, esqr., of counsel for plaintiff and appellee, and John R. Grymes, esqr., of counsel for defendants and appellants.

Opinion and decree.

Supreme court of the State of Louisiana, Monday, May 17th, 1847.

The court met: Present, their honors George Eustis, chief justice, P. A. Rost, George R. King, and Thomas Slidell, associate justices.

MUNICIPALITY No. ONE, appellee,
vs.
STEAMBOAT SULTANA, Captain Pease, and owners, appellants.

Appeal from the parish court, in and for the parish and city of Orleans.

In this cause the court this day delivered their opinion in writing in the words and figures following:

This is an action for the recovery of the sum of eighty-two dollars alleged to be due for the wharfage of the steamer Sultana.

It is before us on an appeal from the late parish court of New Orleans, which rendered judgment for the plaintiff in affirming the judgment rendered by a justice of the peace of New Orleans, before whom the suit was originally brought.

Under the constitution, the power of this court, in appeals of this kind, is limited to the legality and constitutionality of the ordnance under which the claim of the plaintiff is sought to be enforced.

The 3d Municipality vs. Blanc, 1 Annual Report, 385.

I. The General Council of New Orleans has power to fix one uniform rate of wharfage, to be paid by ships, steamers, and other water craft, mooring in front of any portion of the city. Act of 1836, § 20.

So far as the authority of the State is concerned, the plaintiff has a right to exact wharfage from a steamer moored in front of it within its limits; and our opinion is, that so far as the ordinance establishes an uniform rate of wharfage, it is not in violation of any law of the State or of the United States.

II. But it is alleged to be in violation of the Constitution of the United States, in this, that it is contrary to the 8th section of the first article of that instrument, which gives Congress the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes; and to lay and collect taxes, duties, imposts, and excises; and conflicts with the tenth section of the same article, which provides that no State shall without the consent of Congress lay any duties

on imports or exports, except what may be absolutely necessary for executing its inspection laws, and that no State shall lay any duty of tonnage without the consent of Congress.

There is no charge authorized by law for the landing or shipping of goods, or for any other use of the land or fixtures adjacent to the water, and the wharfage claimed by the plaintiff is placed on the ground of its being a compensation for the artificial facilities which are afforded to vessels in mooring them in safety in loading or unloading their cargoes, and in furnishing an easy and convenient access to them.

The landing and shipment of the bulky produce of this mart is effected by means of stages which extend from the vessel to the shore. In some parts of the port there are floating bridges between them, and without the means provided for that purpose the port, as a place for shipping, could only be used at a very advanced rate of expense over its present rates, and accompanied with such inconvenience and loss of time, that, it may surely be assumed that the works which the municipality have caused to be constructed, with their apparatus, may be considered necessary and useful. This is a fact we do not understand to be drawn in question, and we think that it may be assumed that the exaction of wharfage, as a fair remuneration for the expenses thus incurred, and those which are probably to continue for the same object, is, under no view that can be taken, contrary to the letter or spirit of the Constitution of the United States.

But it is contended by the learned counsel that the amount of the wharfage exacted under this ordinance is entirely out of proportion to any such object; that it is a tax levied on the commerce of the country for the general benefit of the inhabitants of New Orleans; that it is a source of revenue and profit to them, and that the form in which it is imposed is a mere pretence to cover what is in fact an unconstitutional tax or impost levied on objects which neither the municipal nor State authority has the power to reach or interfere with. In the present case it is in evidence that the steamer Sultana, a licensed coasting vessel of the United States, of upwards of five hundred tons burthen, was employed in the Vicksburg and intermediate trade with this port; that she made one voyage a week between the two places, and that the sum of eighty-two dollars is exacted for wharfage on her mooring in any part of the limits of the municipality. It is urged that the aggregate thus exacted in the course of a season is such a tax upon the navigation, foreign and internal, as to be a palpable and flagrant violation of the Constitution of the United States.

We consider it competent for the legislature to authorize the receipt of wharfage as a compensation or remuneration for keeping the bank of the river in such a condition as to ensure the safe and expeditious shipment and landing of merchandise and produce, by the construction of a spacious and convenient levee and quai suitable for a mart like this, and of projecting wharves with necessary appendant machinery.

Wharfage is exacted, it is believed, in all the maritime ports of the United States; its exaction has never been considered unlawful or in de-

rogation of any right secured under the Constitution of the United States. So that the question before us is one of degree.

Wharfage may lawfully be demanded, but beyond a reasonable remuneration, a compensation for an equivalent, it is said to be unconstitutional.

There are statements in evidence by which it appears that from June, 1836, to February, 1845, the expenses of the port fell short of the receipts from wharfage by forty-three thousand nine hundred and thirty-nine dollars; and from February 28th, 1845, to the 31st March, 1846, though the statements are not definite, it is apparent that the receipts far exceeded the expenditures. The gross receipts from that source were seventy-four thousand dollars, and the fournitures diverses pour le port, pavage, et autres travaux de reparations pour la municipalité, are put down at à peu près sixty-one thousand one hundred and twenty dollars. On the other hand it is proved that on account of the abrasion of the soil on the border of the river, which takes place on the fall of the water in the summer, the bridges are liable to be destroyed; that the wharves between Custom House street and Hospital were destroyed four times in five years, in 1840, 1841, 1843, 1844. It is also contended that the statements do not contain all the charges that ought to be made to the account of the port, and that the receipts from wharfage do not exceed the expenditures chargeable to the port expenses direct and those incidental, and a reasonable sum to meet those caused by the destruction and injury of the wharves, and the repairs of the port, according to the usual action of the river upon the bank and batture in front of it, on which some of the wharves are constructed.

The matter we are thus called to decide is purely administrative. We are called upon to fix the sum which the municipality may receive as wharfage, and to refuse to award any sum beyond what we may deem lawful, as a fair remuneration for their port expenses, actual, prospective and contingent.

There could scarcely be a stronger illustration than this case offers of the wisdom and truth of the dictum of Chief Justice Marshal, in the case of McCulloh vs. the State of Maryland, 12 Wheaton, 430. "We are not driven," says he, "to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse, of the power." The functions of that department are, under the true theory of our Government, confined to those cases in which its authority cannot be questioned, and its action will be consequently effectual.

Municipality No. Two vs. G. B. Duncan, 2d Annual Report.

If the court were to reduce the amount as asked by the defendant, an accident might render its judgment not only contradictory to the very principle on which it would be founded, but its execution an unwarrantable interference with things over which the municipal government must necessarily have the control.

The government of each municipality is charged with the administration and police of its portion of the port, the preservation of the levee,

as well as with its own financial affairs. The authority delegated to them for the former object is a portion of the political power of the State, and its exercise appertains to the public order, and involves the safety of the city in certain seasons of the year. The reasoning of the Chief Justice in the case cited may be applied to a certain extent to the case under consideration.

The government of the municipality has determined that the rates of wharfage are due as such; from this the State has not dissented. The responsibility of the act rests with the municipal government. The consequence of the interference of the judicial power in the details of its finances can be readily foreseen. If it be appealed to in cases in which the amount of its imposts, taxes, or dues are drawn in question, and should exercise its authority in matters of detail, or those which may be considered as administrative, it is obvious that the administration of municipal affairs must be arrested, unless the judicial power took upon itself the responsibility of conducting them, and provided against the consequences of its decrees

It would seem therefore to be true that within a certain range, which, however, it is not easy to define or limit, where there is an acknowledged right, which is necessary for the performance of a public function, and which is liable to abuse, that the measure of its use and abuse is rather a matter of legislative discretion than for judicial decision.

Where there is no right, however small the burden or laudable the purpose to which it is applied, the Judiciary must interfere. If this wharfage is a tax on commerce, or on imposts, or exports, it is unconstitutional, however small the amount. If it be not per se unconstitutional, the unconstitutionality depending according to the argument on the unreasonableness of the amount, the action of the Judiciary is brought directly in conflict with the municipal administrative power on an administrative question, over which, it must be conceded, the city government is called upon to exercise to a certain extent discretionary power. The judicial action is put forth in favor of absolute, positive, legal rights, they must be separated by a distinct line of demarcation from those which are subject to the action of the other branches of the Government, the interference with which must be avoided. Such is, as we understand it, the theory of our system, and upon the observance of the principle of leaving to each branch of the Government the performance of the functions with which it is invested, its success and durability depend.

The force of the argument addressed to us presupposes that a proper case has been made out for the judicial power. The impolicy of this ordinance, the disastrous consequences of imposing burthens on commerce, and the inevitable effect of such a course of exaction on the interests of the State and city may be as serious and as certain as is contended for on the part of the defendant.

We are far from believing that the charges imposed by the ordinance are consistent with a proper and considerate view of those interests. The remedy for this can be had elsewhere than from the judicial power.

With more enlarged views of public policy the electors may apply at once a remedy to the evil, or the legislature itself may confine the exactions of the municipalities within fixed and reasonable limits. The States of the Union bordering on the waters of this great valley, and the great shipping interest of the north, whose interests are more effected by our port charges, will be sure, in case of necessity, to call into activity for their protection the power of Congress to regulate commerce.

It cannot be believed, that, if it were attempted, a State holding the great entrance from the ocean to large and populous internal States and cities should be permitted, under our present political organization, to embarrass foreign and domestic trade by unreasonable and unnecessary burthens, which would be alike inconsistent with our settled policy, the principles of our Government, and the laws of nations as we understand them. 1 Kent's Com., 35. Wheaton's Law of Nations, p. 508.

But the sole question with us in this point is whether, under the evidence, it is competent for the judicial power to declare the ordinance unconstitutional; we are under the necessity of saying that we have nothing before us on which we can determine that the wharfage claimed by the plaintiff is contrary to the Constitution of the United States by reason of its amount.

III. It is contended by the defendant, that the ordinance is in contravention of the acts of Congress for the admission of Louisiana into the Union, of February, 1811, and the 8th of April, 1812.

The reasons for which we have considered the ordinance as not conflicting with the Constitution of the United States, apply to the acts referred to, giving them all the effect which the defendants assign to them.

It is the wish of the defendants that the opinion of the Supreme Court of the United States should be had on the subject involved in this suit, in which we cordially acquiesce.

We have, therefore, confined our decision exclusively to the propositions submitted and argued, without presenting many obvious considerations in support of our views which result from the constitutional jurisprudence of the United States, as established by the decision of that tribunal.

It is therefore ordered, adjudged, and decreed, that the judgment of the court below be affirmed with costs.

Petition in error.

THE MUNICIPALITY No. One of the city of New Orleans
vs.
The STEAMBOAT SULTANA, and Horace Pease and Abijah Fisk, owners of said boat.

To the honorable the chief justice of the supreme court of the State of Louisiana:

The petition of Horrace Peas and Abijah Fisk, defendants in the

above mentioned suit, humbly shews, that they are advised and believe there is error in the final judgment rendered by the supreme court of the State of Louisiana in the above case, in which the Municipality No. One, of the city of New Orleans, is plaintiff, and your petitioners defendants, to the prejudice of your petitioners. Wherefore, they pray your honor to allow and grant them a writ of error to the Supreme Court of the United States, according to law.

(Signed) JNO. R. GRYMES,
For plaintiffs in error.

Order.

Be it so.

(Signed) G. EUSTIS, *Chief justice,*
May 27th, 1847.

Endorsed.

Supreme court, E. D., filed May 27th, 1847.
(Signed) EUGENE LASERE, *Clerk.*

Bond for writ of error.

Know all men by these presents, that we, Horrace Pease and Abijah Fisk, principal, and Fisk and Steever as sureties, are held and firmly bound unto the First Municipality of the city of New Orleans, in the full and just sum of five hundred dollars, to be paid to the said First Municipality of the city of New Orleans, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of May, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas, lately, at a supreme court of the State of Louisiana, in and for the eastern district of Louisiana, in a suit depending in said supreme court, wherein the First Municipality of the city of New Orleans is plaintiff, and the said Horrace Peas and Abijah Fisk are defendants, judgment was rendered against the said Horrace Peas and Abijah Fisk, and the said Horrace Pease and Abijah Fisk, having claimed a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said First Municipality of the city of New Orleans, citing and admonishing said municipality to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Horrace Peas and Abijah Fisk shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) HORACE PEAS & ABIJAH FISK, [L. S.]
(") By their attorney, J. R. GRYMES, [L. S.]
(") FISK & STEEVER. [L. S.]

Sealed and delivered in the presence of—

This bond and security is approved. January 5th, 1847.
(Signed) GEORGE EUSTIS,
Chief justice.

Endorsed.

Supreme court of the State of La. Filed May 27th, 1847.
(Signed) EUGENE LASERE, *Clerk.*

Assignment of error.

MUNICIPALITY No. ONE, of the city of New Orleans
vs.
HORRACE PEAS and Abijah Fisk, owners of the Steamboat Sultana.

Assignment of errors.

And the said defendants now come, and assign for error, in the judgment rendered in the above case by the supreme court of the State of Louisiana, that the said judgment should have been for the said defendants and plaintiffs in error, and not for the said plaintiffs and defendants in error, as the same has been rendered.

Wherefore they, the said defendants and plaintiffs in error, pray that the said judgment may be reversed.
(Signed) JNO. R. GRYMES,
For plffs. in error.

Endorsed.

Supreme court. Filed May 27th, 1847.
(Signed) EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The president of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, between the Municipality Number One, of the city of New Orleans, and Horrace Peas and Abijah Fisk, owners of the steamboat Sultanna, a manifest error hath happened, to the great damage of the said Horrace Peas and Abijah Fisk, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the second Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause

further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 27th day of May, in the year of our Lord one thousand eight hundred and forty-seven.

EUGENE LASERE,
Clerk of the supreme court of the State of Louisiana, for the eastern district.

Supreme court of the State of Louisiana, E. D. No. 68.

MUNICIPALITY NO. ONE
vs.
STEAMER SULTANA, Capt. PEASE, and OWNERS. } Writ of error.

Copy of the writ of error lodged in the clerk's office of the supreme court of the State [of] Louisiana, in pursuance [of] the statute in such cases made and provided this twenty-seventh day of May, 1847.

Attorney of plaintiff in error.

Supreme court, filed May 27th, 1847.
EUGENE LASERE, *Clerk.*

The United States of America, to the Municipality Number One, of the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Horrace Peas and Abijah Fisk, owners of the steamboat Sultanna, are plaintiffs in error, and you are defendant in error; to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty-seven.

GEORGE EUSTIS, *C. J.*

Supreme court of the State of Louisiana, E. D. No. 68.

MUNICIPALITY NO. ONE
vs.
STEAMER SULTANA, Capt. PEAS, and OWNERS } Citation in error.

Supreme court, filed May 27th, 1847.
EUGENE LASERE, *Clerk.*

Received, June 8th, 1847, and served on the same day, [a] copy of the within citation on the Municipality Number One, of the city of New Orleans, by personal delivery to the honorable A. D. Crossman, mayor of the city.

Returned, June 8, 1847. JNO. H. HEWIT, *Sh'ff.*

UNITED STATES OF AMERICA,
Supreme court of the State of Louisiana, E. D.

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana for the eastern district, do hereby certify, that the foregoing fifty-four pages, and printed pamphlet annexed, contain a true copy of the transcript of the proceedings had in the parish court, in and for the parish and city of New Orleans, in a certain suit wherein Municipality No. One, of the city of New Orleans, was plaintiff, and steamer Sultana, Capt. Pease, and owners, were defendants; and also of the proceedings had in this supreme court on the appeal taken by said steamer Sultana, Capt. Pease, and owners, which appeal is now on the files thereof under No. 68.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this thir-
[SEAL.] tieth day of June, A. D. eighteen hundred and forty-seven, and in the seventy-first year of the independence of the United States of America.

EUGENE LASERE, *Clerk*.

UNITED STATES OF AMERICA,
Supreme court of the State of Louisiana, E. D.

I, P. A. Rost, one of the associate justices of the supreme court of the State of Louisiana, do hereby certify, that Eugene Lasere is clerk of the supreme court for the eastern district; that the signature of Eugene Lasere to the within certificate is in the proper handwriting of him, the said clerk; that the certificate is in due form of law; and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 31st [day of] June, 1847.

P. A. ROST. [SEAL.]

Document No. 1, offered in evidence, of which this is a copy.

J. O.

MUNICIPALITY No. 1,
vs.
Steamer SULTANA, Capt. Pease, and owners.
No. 16,664 of the parish court.

Rapport du comité de finances de la première municipalité.

Rapport du comité de finances de la première municipalité.

Le comité de finances a l'honneur, avant l'expiration de l'année administrative, de soumettre au conseil son rapport annuel, accompagné des états ci-annexés, numérotés de 1 à 9, et montrant la situation exacte des affaires financières de la municipalité, les recettes et depenses de l'année dernière et celles de l'année prochaine.

C'est avec un vif plaisir que le comité vous annonce que les finances de la municipalité sont en ce moment dans un état tout à fait prospère, et que grâces à l'économie des deux dernières années, une grande portion de sa dette a pu être payée.

Le total de son passif, plus amplement détaillé au document marqué No. 1 ci-annexé, s'élève à sept cent quatre-vingt-huit mille quatre cent quarante-trois piastres et quatre-vingt-quatre cents, ci $788,443 81 c.

Le comité croit qu'il est de son devoir de faire observer que l'agmentation des billets à payer provient du réglement fait avec la caisse d'amortissement, par lequel des billets ont été fournis tant pour les quotités déjà échues que pour les quotités de l'année, selon qu'elles sont fixées par le conseil général; l'endossement des bonds émis par la compagnie de navigation s'élevant à $200,000. Deux cent mille piastres ne se trouvent pas compris dans le passif, attendu que par décision judiciaire cette municipalité se trouve déchargée de cent mille piastres, $100,000—desdits bons—et votre comité est d'avis que dans aucun cas, même si la municipalité était condamnée à payer une certaine partie desdits bonds; elle ne peut éprouver aucune perte, attendu que les propriétés qui lui sont hypothéquées la garantissent pleinement.

L'état suivant établit le total des billets à payer à partir de 1845 à 1849, inclusivement.

1845 - - - - - -	$222,720 06
1846 - - - - - -	111,486 03
1847 - - - - - -	80,629 00
1848 - - - - - -	32,821 00
1849 - - - - - -	21,333 00
Total—quatre cent soixante-huit mille neuf cent quatre-vingt neuf piastres et neuf cents - -	$468,989 09

Le total de l'actif, plus amplement détaillé dans le document ci-annexé et numeroté un, s'élève, non compris les deux marchés et autres édifices publics, à sept cent cinquante-six mille et six piastres et cinquante-deux cents - - - - - $756,006 52

Votre comité, en estimant les propriétés, leur a donné le prix que dans son opinion elles pourraient rapporter.

Les recettes et dépenses du 1er Avril, 1844, au 28 Fevrier, 1845, sont comme suit:

Département des travaux publics et améliorations, d'après l'état No. 2, ci-annexé de M. Durel, trésorier.

Recettes—cinq cent quatre-vingt deux mille deux cent vingt piastres et vingt-six cents - - - - -	$582,220 26
Depenses—cinq cent quatre-vingt-deux mille cent soixante-douze piastres, soixante-neuf cents - -	582,172 69
Excédant des recettes sur les dépenses, quarante-huit piastres et cinquante-sept cents - - -	$48 57

Département de la police, d'après l'état No. 3, ci-annexé, de A. J. Guirot, trésorier.

Recettes.—Cent soixante-sept mille quatre cent vingt-une piastres et vingt-un cents - - - - -	$167,421 21

Dépenses.—Cent cinquante mille neuf cent quarante-quatre piastres cinq cents - - - 150,944 05

Excédant des recettes sur les dépenses.—Seize mille quatre cent soixante-dix-sept piastres 16|100 - 16,477 16

Recettes totales.—Sept cent quarante-neuf mille six cent quarante-deux piastres quarante-sept cents - - - $749,642 47

Dépenses totales.—Sept cent trente trois mille cent seize piastres soixante-quartorze cents - - - 733,116 74

Excédant total des recettes sur les dépenses.—Seize mille cinq cent vingt-cinq piastres, et 73|100 - - $16,525 73

Votre comité vous soumet également l'état approximatif des recettes et dépenses de chaque département de la trésorerie pour la prochaine année.

Département des travaux publics et améliorations d'après l'état No. 4, ci-annexé:

Recettes.—Cent soixante dix-sept mille cent onze piastres et deux cents - - - - - - $177,111 02

Dépenses.—Cent soixante quatorze mille trois cents piastres - - - - - - - 174,300 00

Excédant probable des recettes sur les dépenses.—Deux mille huit cent onze piastres et deux cents - $2,811 02

Département de la police d'après l'état No. 5, ci-annexé:

Recettes.—Cent soixante-dix-huit mille six cent huit piastres et vingt-six cents - - - - - $178,608 26

Dépenses.—Cent soixante quatre mille six cent trente-quatre piastres et quarente-cinq cents - - 164,634 45

Excédant probable des recettes sur les dépenses.—Seize mille neuf cent soixante treize piastres et quatre-vingt-un cents - - - - - $16,973 81

Total des recettes probable.—Trois cent cinquante-cinq mille sept cent dix-neuf piastres vingt-huit cents - - $355,719 28

Total des dépenses probables.—Trois cent trente-huit mille neuf cent trente-quatre piastres et quarante-cinq cents - - - - - - 338,934 45

Total de l'excédant probable des recettes sur les dépenses pour l'année expirant le 31 Mars, 1846.—Seize mille sept cent quatre vingt-quatre piastres quatre-vingt-trois cents - - - - - 16,784 83

Les états Nos. 6 et 7 donnent la balance générale des livres des deux départemens depuis le 1er Juin, 1836, jusqu'au 29 Février, 1845, en remarquant toutefois que le département de la police ne date que du 1er Juin, 1839, époque à laquelle la trésorerie fut divisée en deux départemens.

L'état No. 8 fait connaitre le montant de bons municipaux actuellement en circulation, et fesant partie du passif. Le comité pense que ces bons sont totalement ou presque totalement perdus ou détruits.

Le total des bons municipaux actuellement en circulation est de dix-sept mille huit cent cinquante-quatre piastres et soixante-quinze cents, $17,854 75.

Le comité joint ici un état du voyer donnant la liste de toutes les propriétés foncières de cette municipalité et leur estimation.

Cet état porte les propriétés foncières de la municipalité à la somme de $263,100 00.

Votre comité se trouve heureux, en vous faisant connaitre la situation prospère des finances de cette municipalité, de pouvoir dire que ce résultat a été obtenu sans avoir besoin de faire des emprunts, d'imposer de nouvelles taxes, ou d'aliéner ses propriétés. En continuant la même économie dans les divers départemens, votre comité est convaincu qu'avec l'excédant des revenus, le montant des billets à recevoir, ce que l'on percevra par la rentrée des billets protestés ou autrement, la municipalité pourra faire face à tous ou presque à tous ses engagemens, à leurs échéances respectives, et cela malgré la destruction de presque tous les wharfs en face de la municipalité, dont les réparations ou reconstructions ont diminué les ressources du trésor.

Votre comité est d'avis que si la municipalité n'avait pas à fournir à la caisse d'amortissement sa proportion pour éteindre l'ancienne dette de la corporation, il pourrait en toute sûreté vous recommander de réduire d'un demi pour cent la taxe sur les propriétés foncières, et malgré cela il croit devoir vous suggérer la convenance d'une réduction sur les taxes.

Si le bill, actuellement devant la législature, accordant de nouveaux pouvoirs au conseil-général, est adopté, il améliorera subitement la situation des trois municipalités.

Votre comité recommandera très respectueusement la vente de toutes les propriétés appartenant à cette municipalité, et cela dans un délai convenable. Le produit de ces ventes devant être employé à éteindre, par anticipation, la dette de la municipalité, afin de la mettre à même de diminuer les taxes.

Il ne serait pas convenable de vendre actuellement, mais on pourrait le faire avantageusement dans le commencement de l'année prochaine.

Dans son dernier rapport, votre comité vous a fortement recommandé d'améliorer autant que possible cette partie de la municipalité située de l'autre côté de la rue des remparts; il insistera de nouveau sur l'urgence de faire ces améliorations qui sont hautement réclamées par les citoyens résidant dans cette partie de la municipalité; et d'encourager tous ceux qui voudront y faire des améliorations, augmentant ainsi et la valeur des propriétés et la prospérité générale de la municipalité, mais ces amélio-

rations doivent être faites de manière à ne point compromettre la situation financière de la municipalité.

Le comité ne peut, avant de terminer son rapport, s'empêcher de donner sa plus complète approbation a l'excellent système d'éducation établi dans les écoles publiques depuis deux ans. On ne saurait trop louer le président et les directeurs de ces institutions, généreusement aidés par ce conseil, en allouant les fonds nécessaires. Le trésor a payé, pour ces écoles, l'année dernière, vingt-cinq mille six cent quatre-vingt-quinze piastres et deux cents, et pendant le même espace de temps il a été seulement reçu de l'etat, deux mille six cent vingt-une piastres et deux cents.

Votre comité ne croit pas devoir entrer dans beaucoup de détails à cet égard, attendu que la législature s'occupe actuellement de la grande et important question de l'éducation publique, et il ose dire qu'il n'y a pas un membre de cette honorable assemblée qui refusera son appui à des institutions aussi dignes de louanges; il faut espèrer que la législature adoptera des mesures qui diminueront les fortes dépenses encourues par la municipalité pour cet objet.

Dans ce moment quatorze cents enfants riches ou pauvres, sans aucune distinction, suivent les cours publics. Si les espérances que votre comité fonde sur l'etat étaient déçues il insisterait alors plus vivement que jamais pour que le conseil poursuive avec zèle, une entreprise aussi glorieuse dont les bienfaits seront ressentis par la génération qui s'élève et qui consolidera et perpétuera nos institutions républicaines. La dépense a été grande mais réjouissons-nous par avance en pensant aux grands et inapréciables bienfaits qu'en retireront de milliers d'individus.

L'intention de votre comité était de traiter d'autres sujets d'une grande importance, mais il laissera ce soin à ses successeurs.

Votre comité profite de cette occasion, pour exprimer sa satisfaction du zèle et de l'habileté avec lesquels chaque officier de cette municipalité, a rempli ses devoirs, et il pense qu'il n'est que juste de reconnaitre que pendant qu'il faisait tous ses efforts pour améliorer la situation de la municipalité, il a toujours trouvé parmi tous les membres du conseil, la plus cordiale coopération. En terminant, votre comité vous recommande pour l'avenir, de persévérer dans la rigide économie des deux dernières années.

Le tout vous est respectueusement soumis.

Nouvelle Orléans, 1er Mars, 1845.

A. D. CROSSMAN,
Président du comité de finances.
H. D. PEIRE,
J. E. FAURES.

NUMERO UN.

Municipalité No. Un.—Département des travaux publics.

Etat de situation de l'Actif et du Passif, au 28 Février, 1845.

PASSIF.		
Billets à payer		$468,989 09
Bons payables en 1862 à M. McDonogh, portant 6 0|0 d'intérêt		247,000 00
Circulation de la Municipalité No. 1		17,854 75
Certificats à un an portant 10 pour cent d'intérêt		47,250 00
Bons à 1, 2, 3, 4, et 5 ans		7,350 00
Endossement en faveur de la Compagnie de Navigation	$200,000 00	
Proportion de la Municipalité No. 1, à la caisse générale d'amortissement	40,475 30	
	$240,475 30	
		$788,443 84

ACTIF.		Valeur approximative.	Valeur réelle.
Balance en caisse ce jour		$48 57	$48 57
Billets à recevoir		59,183 37	59,183 37
Billets do protestés		226,382 84	160,000 00
Banq. des améliorations		50,000 00	2,500 00
Compagnie des architectes du 8ème district		4,950 00	
Paroisse d'Orléans pour la geôle, portant 6 pour 0|0 d'intérêt	$94,866 08		
Intérêts dus, portant 6 p. cent	20,050 84		
		114,916 92	114,916 92
Capital de terrains rentes à cens		150,257 66	150,257 66
Propriétés foncières d'après l'état du voyer		263,100 00	263,100 00
A recevoir pour pavage à peu près		12,000 00	5,000 00
Taxes sur propriétés non collectées pour 1836 et 1837		10,484 98	1,000 00
		$891,324 34	$756,006 52

J. A. DUREL, Trésorier.

Nouvelle Orléans, 28 Février, 1845.

No. 2.—*Département des travaux publics et améliorations.*

Recettes et dépenses depuis le 1er Avril, 1844, jusqu'au 28 Février, 1845.

Billets à recevoir protestés -	$2.892 00	Balance du 31 Mars, 1844 -	$7,712 54
Billets à recevoir - -	86,498 99	Billets à recevoir protestés -	11,761 86
Billets à payer - -	216,242 24	Billets à recevoir - -	74.938 36
Halle aux boucheries -	1,763 00	Billets à payer - -	253,670 38
Halle aux légumes - -	6,256 90	Halle aux boucheries -	51,000 00
Acquisition de propriétés foncières - - -	6,225 65	Halle aux légumes - -	30,000 00
Remboursement de pavage -	113 64	Remboursement de pavage -	3,384 30
Taxes de 1836 - -	7 18	Taxes sur les compagnies d'assurance - -	500 00
Taxes de 1837 - -	27 14	Taxes sur 1836 - -	12 20
Bons municipaux - -	62 25	Taxes sur 1837 - -	197 25
Certificats à un an portant 10 pour cent d'intérêt - -	3,200 00	Capital de terrains à rentes -	505 00
Bons payables à 1, 2, 3, 4, et 5 ans - - -	250 00	Dépenses pour le magasin de dépôt - - -	116 97
Travaux de la ville -	2,580 28	Employés de la voierie -	2 00
Fournitures pour les dits travaux - - -	364 62	Intérêts - - -	1,136 46
Pavage - - -	2,890 02	Département de la police -	52,539 37
Horloge et clocher - -	135 00	Quotités à la caisse d'amortissement - - -	730 57
Acquisition de propriétés foncières - - -	1,925 00	Plateforme - - -	1,268 00
Pont du bayou St. Jean -	4,913 42	Protêts - - -	55 00
Entretien des propriétés -	2,465 02	Halle aux fruits - -	577 96
Plantation d'arbres - -	306 58	Loyers sur propriétés foncières - - -	532 50
Frais d'impression - -	214 00	Rentes à cens - -	8,410 97
Ouvertures des rues - -	13,659 01	Dépenses du port - -	127 32
Frais de bureau - -	150 27	Droits sur navires - -	36.035 88
Entretien de pavage - -	2,241 69	Droits sur bateaux à vapeur	45,355 37
Taxes sur propriétés foncières	989 81	Bac de la Municipalité No. 1	1,650 00
Magasin de dépôt - -	120 00		
Employés de la voierie -	5,629 03		
Intérêts sur les bons - -	8,880 90		
Appointemens - -	6,874 78		
Intérêts - - -	21,373 16		
Nègres de chaine - -	4,487 45		
Nettoiement des halles -	1,005 54		
Département de la police -	33.691 48		
Entretien des rues - -	3,087 18		
Ponts en bois - -	4,455 97		
Mandats sur la banque des améliorations - -	346 00		
Do. do. des citoyens	1,861 00		
Frais de notaire - -	82 00		
Echange de bons municipaux	17,972 00		
Quotités à la caisse d'amortissement - - -	72,125 13		
Protêts - - -	35 50		
Dépenses extraordinaires -	373 00		
Halle aux fruits - -	41 74		
Rentes à cens - -	153 92		
Entretien du port - -	40,468 18		
Frais de procès - -	656 50		
Droits sur navires - -	1,079 66		
Droits sur bateaux à vapeur	999 76		
Balance en caisse ce jour -	48 57		
	$582,221 26		$582,221 26

Nouvelle Orléans, 28 Fevrier, 1845.

J. A. DUREL, Trésorier.

No. 3.

Municipalité No. Un.—Département de la police.

Recettes et dépenses du 1er Avril, 1844, au 28 Février, 1845.

RECETTES.		DEPENSES.	
Taxes de 1838 - -	$852 00	Nettoiement de la ville -	$20,337 13
Taxes de 1839 - -	1,233 13	Police de jour et de nuit -	29,173 61
Taxes de 1840 - -	926 90	Dépenses extraordinaires -	1,620 35
Taxes de 1841 - -	1.750 87	Eclairage par le gaz - -	9,864 20
Taxes de 1842 - -	8,282 44	Légion de la Louisiane -	4,000 00
Taxes de 1843 - -	45,715 02	Association catholique des orphelins - - -	250 00
Taxes de 1844 - -	30,674 51	Frais de protêt - -	6 00
Droits sur drays, voitures, &c.	11,165 59	Intérêts - - -	1,272 00
Droits sur marchands -	11,753 00	Frais de procès - -	1,242 44
Droits sur étaliers, colporteurs, &c. - - -	1,490 95	Bureau de santé - -	205 17
Droits sur bals masqués -	1,610 00	Eclairage de la ville -	6,808 39
Droits sur concerts, bals, &c.	705 00	Bataillon Washington -	300 00
Droits sur la ferme des huitres	5,445 00	Appointemens - -	16,019 10
Droits sur rentes à cens -	60 00	Police secrète - -	50 00
Droits sur la maison de travail	4,986 33	Frais d'impression - -	7 00
Droits sur le nouveau cimetière	134 38	Trésorier des améliorations -	18,847 89
Droits sur fonds en dépôt -	133 28	Frais de police - -	1,070 60
Droits sur la nouvelle geôle de police - - -	150 75	Bienfaisance - - -	3,207 66
Droits sur cabarets, pensions, &c. - - -	30,524 07	Pompes à incendie - -	6,320 38
Balance en caisse, 30 Mars, 1844 - - -	9,827 99	Frais de bureau - -	1,312 60
		Ecoles publiques - -	25,695 02
		Frais de la garde de ville -	524 97
		Billets à recevoir - -	67 00
		Geôle de police - -	2,742 54
		Balance en caisse, 28 Février, 1845 - - -	16,477 16
	$167,421 21		$167,421 21

Nouvelle Orleans, 28 Février, 1845.

J. A. DUREL, Trésorier.
A. J. GUIROT, Trésorier.

No. 4.

Département des travaux publics et améliorations.

Etats approximatifs des recettes et dépenses pour l'année expirant le 31 Mars, 1846.

RECETTES.		DEPENSES.		
Rentes à cens - -	$8,919 06	Appointemens y compris les personnes qui travaillent pour la ville - -		$13,760 00
Marché à la viande - -	52,000 00			
Marché aux légumes -	32,000 00			
Marché aux fruits - -	300 00	Appointemens de charpentiers, hommes de journées, charettes, loyers de nègres pour les travaux du voyer, à peu près, $1,500 par mois - - -		18,000 00
Marché du 5ème. district -	200 00			
Rentrés sur le pavage à peu près - - -	2,500 00			
Droits sur les compagnies d'assurances - - -	500 00			
Droits sur bateaux à vapeur à peu près - - -	42,000 00	Une année d'intérêt à M. McDonough, ci	$14,820 00	
Droits sur les navires -	32,000 00	A la banque de l'etat pour la compagnie de navigation	6,000 00	
Plateforme pour les sucres à peu près - - -	1,000 00	Intérêt de 8 0|0 sur la dette à peu près	15,000 00	
Rente annuelle de la geôle de paroisse - - -	5,691 96			35,820 00
		Loyer de nègres pour les travaux de la ville à peu près		5,000 00
		Taxes sur les propriétés de la municipalité - -		600 00
		Quotas à la caisse d'amortissement devant être fixés par le nouveau conseil-général - - -		40,000 00
		Fournitures diverses pour le port, pavage et autres travaux de réparations pour la Municipalité No. Un, à peu près - - -		61,120 00
		Balance probable -		2,811 02
	$177,111 02			$177,111 02

Nouvelle Orléans, 28 Février, 1845.

J. A. DUREL, Trésorier.

No. 5.

Municipalité No. Un.—Département de la police.

Recettes et dépenses probables pour l'année expirant le 31 Mars, 1846.

RECETTES.		DEPENSES.	
Taxes sur propriétés et esclaves	$60,000 00	Nettoiement de la ville, et réparation de pavage	$20,000 00
Taxes sur les négocians, marchands, &c.	20,000 00	Police de jour et de nuit	33,000 00
Taxes sur charrettes et drays, &c.	20,000 00	Dépenses extraordinaires	7,000 00
Taxes sur colporteurs et etaliers	1,500 00	Eclairage par le gaz	10,000 00
Taxes sur cabarets	35,000 00	Billets à payer	15,234 45
Taxes sur ferme aux huitres	5,000 00	Eclairage de la ville	6,000 00
Billets à recevoir de la 3ème municipalité et de l'hôpital de charité	15,010 00	Légion de la Louisiane	3,000 00
Ecoles publiques.		Bataillon de Washington	600 00
Taxes sur les bals masques	2,500 00	Bienfaisance	3,500 00
Amendes	500 00	Pompes à incendie	6,500 00
A recevoir de l'etat	2,621 10	Asile des orphelins catholiques	500 00
	$162,131 10	Bureau de santé	300 00
Balance en caisse le 28 Février, 1845	16,477 16	Geôle de police	3,000 00
		Nouveau cimetière	500 00
		Frais de bureau	1,500 00
		Salaires	18,000 00
		Dépenses extraordinaires de la garde	1,000 00
		Ecoles publiques	35,000 00
	$178,608 26		$178,608 26

Nouvelle Orléans, 28 Février, 1845.

A. J. GUIROT, Trésorier.

No. 6.

Balance générale du 1er Juin, 1836, au 28 Février, 1845.

28	Billets à recevoir protestés	$226,383 11
30	Billets à recevoir	59,183 37
108	Travaux de la ville	15,247 71
112	Fournitures aux travaux do.	12,059 34
124	Pavage	310,675 48
127	Horloge et clocher	1,871 85
130	Propriété McDonough	56,085 57
131	Achats de terres	260,142 77
135	Pont du bayou St. Jean	7,240 66
136	Actions des arch. 8ème district	4,950 00
137	Actions banque des améliorations	50,000 00
141	Entretien des propriétés de la ville	17,725 88
144	Plantation d'arbres	6,882 17
157	Frais d'impression	914 04
167	Légion de la Louisiane	896 31
171	Frais de bureau	18,474 72
175	Entretien de pavage	42,909 37
177	Taxes sur propriétés foncières	8,135 66
179	Magasin de dépôt	2,687 27
180	Ouverture des rues	112,885 21
186	Employés de la voirie	66,874 09
188	Paroisse d'Orléans	94,866 08
192	Intérêts sur bons	195,886 71
199	Appointemens	165,428 92

No. 6—Continued.

223	Halle du 5ème district	$29,513 41
224	Nègres de chaine	34,025 97
230	Nettoiement des halles	4,307 17
232	Frais sur bons	10,929 75
234	Frais sur bons municipaux	20,808 54
251	Entretien des rues	17,951 76
258	Ponts en bois	26,006 23
278	Intérêts sur bons l'etat	7,814 40
285	Frais de notaire	1,564 75
294	Compagnie de navigation	17,380 81
329	Protêts	2,791 50
330	Dépenses extraordinaires	8,597 40
332	Halle aux fruits	1,119 47
339	Frais de procès	24,244 30
340	Entretien du port	334,696 58
353	Intérêts	285,485 49
356	Recettes et dépenses	491,757 81
370	Quotas à la caisse générale	188,952 32
364	Caisse	48 57
		$3,245,392 52

40	Billets à payer	$486,471 29
51	Halle aux boucheries	441,810 50
54	Halle aux légumes	258,716 80
60	Propriétés foncières	629,201 83
69	Remboursement de pavage	91,631 03
75	Dividends sur actions	8,346 12
79	Bons payables dans 25 ans	247,000 00
82	Taxes sur bureaux d'assurances	6,750 00
83	Taxes de 1836	31,889 92
86	Taxes de 1837	56,643 21
87	Bons muncipaux (P. Guesnon)	5,830 00
88	Certificats à un an portant 10 0|0	47,450 00
94	Droits de levée	168,181 05
98	Bons payables à 1, 2, 3, 4, et 5 ans	7,100 00
100	Capital de terrains à rentes	99,370 21
103	Rentes annuelles sur la geôle de paroisse	19,792 88
217	Comptes en suspens	28 72
248	Département de la police	154,915 55
273	Checks sur la banque des améliorations	721 00
275	Checks banque des citoyens	2,146 00
287	Echange de bons municipaux	9,157 75
292	Poudrière	3,000 00
316	Droits de quayage sur bateaux	37,988 25
320	Droits sur navires	20,048 88
324	Droits sur goëlettes	6,306 51
335	Rentes sur propriétés foncières	982 50
342	Droits sur navires	151,679 50
351	Bac Municipalité No. 1	3,200 00
357	Droits sur bateaux à vapeur	161,613 11
358	Rentes à cens	87,289 65
297	Plateforme pour les sucres	30 26
		$3,245,392 52

Nouvelle Orléans, le 28 Février, 1845.

A. G. GUIROT, Trésorier.
J. A. DUREL, Trésorier.

No. 7.

Municipalité No. Un.—Département de la police.

Balance générale des livres de ce département depuis le 1er Juin, 1839, jusqu'au 28 Février, 1845.

RECETTES.		DEPENSES.	
Taxes de 1838 - -	$60,456 63	Nettoiement de la ville -	$161,163 31
Taxes de 1839 - -	61,620 98	Police de jour et de nuit -	216,162 72
Taxes de 1840 - -	52,181 99	Dépenses extraordinaires -	5,748 08
Taxes de 1841 - -	49,923 63	Association charitable des pompiers - -	1,750 00
Taxes de 1842 -	98.903 39	Eclairage par le gaz -	51,811 96
Taxes de 1843 - -	84,584 28	Légion de la Louisiane -	14,000 00
Taxes de 1844 - -	30,674 51	Association catholique des orphelins - -	2,031 39
Droits sur marchands, &c. -	85,937 56	Frais de procès - -	2,743 93
Droits sur voitures, drays, &c.	85,730 51	Billets à recevoir protestés -	1,354 40
Droits sur étaliers, colporteurs	10,940 28	Intérêts - - -	4,040 88
Droits sur concerts, bals, &c.	3,850 00	Protêts - - -	66 00
Droits sur bals masqués -	19,115 00	Banque du commerce -	205 04
Amendes - - -	26,138 30	Bureau de santé - -	1,089 38
Ferme des huitres - -	40,434 72	Réparation de banquettes -	2,543 82
Rentes à cens - -	11,543 25	Nettoiement des balles -	3,904 83
Cimetière - - -	1,132 51	Maison de travail - -	496 39
Fonds en dépôts - -	669 54	Eclairage de la ville -	54,333 40
Taxes sur cabarets, pensions, &c. - - -	288,017 91	Bataillon Washington -	1,500 00
		Appointemens - -	123,038 61
		Police secrète - -	1,194 06
		Impression - - -	2,305 00
		Trésorier des travaux publics et améliorations -	154,915 55
		Frais de police - -	10,621 94
		Bienfaisance - -	37,433 53
		Pompes à incendie - -	42,148 64
		Nouvelle geôle de police -	1,667 18
		Frais de bureau - -	15,276 23
		Ecoles publiques - -	43,533 08
		Garde de ville - -	4,844 01
		Billets à recevoir - -	15,010 00
		Geôle de police - -	18,454 47
		Balance en caisse au 28 Février, 1845 - -	16,477 16
	$1,011,851 99		$1,011,854 99

Nouvelle Orléans, 28 Février, 1845.

J. A. DUREL, Trésorier.
A. J. GUIROT, Trésorier.

No. 8.

Circulation de la Municipalite No. Un.

Bons signés par Philip Guesnon - - - - - -	$5,830 00
Bons signés par Thomas Duplessis - - - - - -	9,157 75
Checks sur la Banque des Citoyens - - - - -	2,146 00
Checks sur la Banque des Améliorations - - - - -	721 00
	$17,854 75

Nouvelle Orleans, le 28 Février, 1845.

J. A. DUREL, Trésorier.

No. 9.

Municipalite No. Un.

Taxes sur propriétés foncières et esclaves non collectées.

	En main.	Deliverées à l'avocat de la corporation.	Total.
Taxes de 1838 - - - -	$2,609 24	$2,667 00	$5,276 24
Taxes de 1839 - - - -	2,051 00	3,654 37	5,705 37
Taxes de 1840 - - - -	921 50	3,044 75	3,966 25
Taxes de 1841 - - - -	865 00	5,830 25	6,695 25
Taxes de 1842 - - - -	2,141 12	15,840 00	17,981 12
Taxes de 1843 - - - -	5,773 40	8,229 23	14,002 63
	$14,361 26	$39,265 60	$53,626 86

Nouvelle Orléans, 1er Mars, 1845.

A. J. GUIROT, Trésorier.

No. 10.

Note des proprietes appartenant a la premiere municipalite, au mois de Fevrier, 1845.

1er DISTRICT.	
34 Terrains situés en face la Douane, à $3,000 chaque - - - L'ilet sur lequel est situé la Douane (pour mémoire.)	$102,000
2 Terrains en face le chemin public, entre Conti et Bienville (en contestation avec les propriétaires riverains) - - - -	1,800
1 Terrain triangulaire à l'encoignure Claiborne et Carondelet - -	200
La case à pompe No. 4 - - - - - -	4,500
4 Petits terrains dans l'ilet 28, bornés par les rues Marais, Canal, Douane, et Villeré - - - - - - - -	1,200
2 Terrains dans l'ilet 26, bornés par les rues Tremé, Marais, Bienville, et Douane, adjugés à L. Vivant el rétrocédés par lui à la municipalité -	1,650
3 Terrains dans le même ilet, adjugés, 2 à Daily et 1 à Mullony, en 1842, qui n'ont jamais réglés - - - - -	2,700
1 Terrain situé rue des Marais, entre St. Louis en Conti - - -	600
1 Terrain, ilet 27, rétrocédé par S. Wettiny - - - -	1,000
2d DISTRICT.	
1 Lot de terre à l'encoignure du passage de la Bourse et place St. Antoine, occupé parle bataillon d'artillerie - - - - -	800
3e DISTRICT.	
1 Triangle face au marché aux légumes - - - - -	5,000
4e DISTRICT.	
Propriété ci-devant McDonough - - - - -	50,000
La case à pompe rue de l'Hôpital - - - - -	2,800